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STATE OF NEW YORK

DEPARTMENT OF HIGHWAYS

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TOWN HIGHWAY BUREAU

THE HIGHWAY LAW

CONSTITUTING

CHAPTER 330, LAWS OF 1908

WITH ANNOTATIONS

1909



(Revised to show Bulletin Number 21)

1909

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DEPARTMENT OF HIGHWAYS

TOWN HIGHWAY BUREAU

THE HIGHWAY LAW

CONSTITUTING

CHAPTER 330, LAWS OF 1908

WITH ANNOTATIONS

1909

(Extract H from Bulletin Number 1)

S. PERCY HOOKER, Chairman
T. WARREN ALLEN
ROBERT EARL
Commissioners

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Prefatory Note.

The new Highway Law is the product of an exhaustive investigation carried on by a joint special legislative committee which was created by the Legislature of 1907 and is known as the Highway Law of 1908 (Chapter 330, Laws of 1908).

It establishes a department of highways and the administrative responsibility is vested in three commissioners of highways appointed by the Governor. In the preparation of this law the committee were not unmindful of the fact that system is the first essential in any scheme for the repair and improvement of the highways of the State. It was recognized as a fact that not merely the work of a single year but the working out of a carefully devised plan or scheme for a series of years must be considered.

The law provides that the Commission shall prescribe rules and regulations, and in compliance therewith definite rules and regulations for the improvement, repair and maintenance of town highways and bridges are herein contained. They are for the guidance of county and town officers, also division engineers and other employees of the department of highways. The direct representatives of the Commission, together with the district and county superintendents and town superintendents, will be able to formulate proper plans or schemes, so that there will not be a lack of system, which is the greatest drawback to the economic repair and improvement of public highways.

Heretofore, expenditures have in many instances been made on lines independent of each other, and without thought of future work and requirements.

It is reasonable to expect that by a generous amount of improvement and repair each year the town highways will rapidly improve. It is the desire of the Commission that the division engineers, district and county superintendents and town superintendents shall cooperate with them in following out the prescribed rules and regulations, and also the plans or schemes for each year's work, so that the result will be the bringing of all highways and bridges to fixed standards within a limited term of years. This cannot be worked out in all details at once, but the desired end should be kept constantly in view.

In carrying out such plans, provisions must be made so that each and every mile of public highway within the towns of the State shall receive its proper care and attention, and also so that certain work in the way of permanent improvements in different parts of the town can be made, to the end that the rightful expectations of the citizens in respect thereto may be realized, but all who are charged with this work in an official capacity must be guarded in dealing with the requests and demands of residents who do not consider any road excepting that in front of their own premises.

Value of Highway Improvement.

The value of good roads can scarcely be overestimated. The State, county and town cannot attain to their full share of prosperity until each and every mile of the highways in the State shall have been repaired and improved. The amount of travel which each highway or section thereof is called upon to carry, naturally and necessarily governs the required time, attention and necessary outlay therefor.

Steam and trolley railways will not and cannot take the place of public thoroughfares. The construction of such railways simply creates a demand for better highways. The distinction between good roads and bad roads implies that the communities through which they pass are progressive or dormant, prosperous or nonprosperous, enjoyable or unpleasant.

The proper maintenance, repair and improvement of public highways is dependent upon skill, experienced direction and an efficient system. It has been ten years since the adoption of the Higbie-Armstrong and Fuller-Plank acts, and it is to be regretted that we have not more capable and efficient road builders in the towns of the State. A problem not easy of solution has been to devise means so that the towns of the State, either by an appointive or an elective system, can secure men of the right character to take charge of work of this importance; and when once appointed or elected there should be no disposition on the part of the authorities of the town to demand a change on account of personal pique or any other reason, excepting malfeasance or misfeasance in office. Permanency in office is an essential. The best man obtainable, regardless of political affiliations, should be elected or appointed as town superintendent. He should be a man of good practical judgment, capable of laying out work, and

of handling and directing men; he should make a careful study of the principles of road making and the local conditions in order that the best results may be obtained. Drainage, grading, crushing stone, the selection, hauling and handling of stone and gravel, the method of placing these materials on a road, all suggest the many details which tend to economical and good results.

Good roads are important to the financial, social and educational welfare of any community, and any enumeration of their advantages is likely to include all the benefits. The principal advantages of good roads are as follows: They decrease the cost of transportation, they permit the cultivation of crops not otherwise marketable, they give a longer time for marketing of crops, they permit marketing to be done when prices are most favorable, they give a wider choice of marketing places, they tend to equalize railroad traffic, they tend to equalize mercantile business during the different seasons of the year, they permit more easy intercourse between residents of rural communities and also between rural and urban populations, they facilitate the consolidation of rural schools and the rural free delivery system.

The important changes as the result of this law make it advisable to furnish directions for the guidance of officials who now have, or may hereafter have, by law, the care and supervision of public highways and bridges.

The right of the traveling public to have all of the public highways in this State efficiently improved, repaired and maintained is not to be gainsaid, and therefore this bulletin is prepared for free distribution so that the public at large may clearly understand their rights and the requirements of this department in carrying out its rules and regulations as herein defined.

Department of Highways.

S. PERCY HOOKER,
T. WARREN ALLEN,
ROBERT EARL,

Commissioners.

THE HIGHWAY LAW

OF THE

STATE OF NEW YORK

CHAPTER I.

The Highway Law.

L. 1908, chap. 330. “An act in relation to highways and bridges, constituting a consolidation of the highway laws, and providing for a state department of highways and for the construction and maintenance of state and county highways.”

- Article I. Short title and definitions (§§ 1-3).
 II. Department of highways (§§ 10-22).
 III. District or county superintendents (§§ 30-33).
 IV. Town superintendents; general powers and duties (§§ 40-70).
 V. Highway moneys; state aid (§§ 90-111).
 VI. State and county highways (§§ 120-157).
 VII. Maintenance of state and county highways (§§ 170-179).
 VIII. Laying out, altering and discontinuing highways; private roads (§§ 190-240).
 IX. Bridges (§§ 250-262).
 X. Ferries (§§ 270-274).
 XI. Miscellaneous provisions (§§ 280-303).
 XII. Saving clauses; laws repealed; when to take effect (§§ 310-318).

Short Title and Definitions.

- Section 1. Short title.
2. Definitions.
3. Classification of highways.

Section 1. **Short title.**—This chapter shall be known as the “Highway Law.”

§ 2. **Definitions.**—1. The term “department,” when used in this chapter, shall mean the department of highways as constituted herein.

2. The term “commission,” when so used, shall mean the state commission of highways.

3. The term "district superintendent" or "county superintendent," when so used, shall mean the district superintendent of highways or county superintendent of highways respectively.

4. The term "town superintendent," when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of less than five feet.

§ 3. **Classification of highways.**—Highways, the construction, improvement or maintenance of which is provided for in this chapter, are hereby divided into three classes:

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of this chapter.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the two preceding classes.

Department of Highways.

Section 10. Department of highways established.

11. State commission of highways; deputies; secretary and other clerks, officers and employees.
12. Oath of office; undertakings.
13. Principal office; official seal; stationery.
14. Salaries and expenses.
15. General powers and duties of the commission.
16. Division of state; division engineers.
17. Duties of division engineers.
18. Blank forms and town accounts.
19. Examination of accounts and records.
20. Condemnation of bridges.
21. Estimate of cost of maintenance of state and county highways.
22. Rules and regulations for state and county highways.

§ 10. **Department of highways established.**—There is hereby established a department, to be known as a department of high-

ways, which shall be constituted as provided in this chapter, and shall have the powers and perform the duties hereinafter prescribed.

§ 11. **State commission of highways; deputies, secretary, and other clerks, officers and employees.**— On or before the tenth day of January, nineteen hundred and nine, the governor shall appoint three commissioners of highways, by and with the advice and consent of the senate, who shall constitute the state commission of highways, and shall devote all of their time to the duties of their office. Of the commissioners first appointed one shall be designated by the governor as chairman during the term of office of said commissioner. One of them shall be a practical civil engineer who shall have had actual experience in the construction of highways and bridges. The commissioners first appointed hereunder shall hold office for terms of two, four and six years commencing on the first day of January, nineteen hundred and nine, to be designated by the governor when making the appointment. One of such commissioners shall belong to the party casting at the last preceding state election the next to the highest number of votes for governor, and whenever appointments are made to fill vacancies caused by the expiration of term or otherwise they shall be made so that at least one of such commissioners shall belong to such party. Upon the expiration of each such terms the term of office of each commissioner thereafter appointed shall be six years from the first day of January succeeding the expiration of the term of office of his predecessor. If a vacancy shall occur otherwise than by expiration of term it shall be filled by appointment for the unexpired term. The commission shall appoint two deputies, each of whom shall have had practical experience in the actual building, construction and maintenance of highways and be familiar with the operation and effect of state statutes relating to highways and bridges. One of such deputies shall be known as the first deputy and his duties shall relate to the maintenance of state and county highways; the other shall be known as the second deputy, and his duties shall relate to the improvement, repair and maintenance of town highways and bridges. Each of such deputies shall have such other and further duties as may be imposed upon him by the commission. The commission shall appoint a secretary who shall have the duties prescribed by the commission. The commission shall appoint such resident engineers, clerks, officers and em-

ployees as may be required to carry out the provisions of this chapter, subject to the civil service laws and the provisions of this chapter, within the amount appropriated therefor, unless the appointment of such clerks, officers or employees is otherwise provided for herein. District superintendents, appointed as provided in this chapter, shall be appointed from lists prepared from examinations which shall test their qualifications for the actual construction and maintenance of highways and their executive capacity, rather than their scientific attainments. Clerks, other than those employed in the principal office of the commission, inspectors and other employees in the department whose duties pertain to the maintenance of highways, shall likewise be selected from lists prepared from examinations testing their general knowledge of the highway law and of the practical construction of highways. Inspectors of construction, other than engineers and levelers, shall be selected from lists similarly prepared, except that they shall be residents of the county within which the highway constructed or improved is located. To the end that the employees of the department of highways engaged in the work of constructing, improving or maintaining highways under the provisions of this chapter may be practical highway builders, the highway commission is authorized to indicate to the civil service commission the relative value which should be given to experience and scientific attainments.

§ 12. **Oath of office; undertaking.**— Each of such commissioners shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require. Such undertaking shall be to the effect that each such commissioner will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such commissioner in accordance with law, or in default thereof that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default. Each of the deputies and the secretary shall execute an undertaking in the sum of five thousand dollars to be approved by the commission and filed in its office.

§ 13. **Principal office; official seal; stationery.**— The principal office of the department shall be in the city of Albany in rooms provided by the trustees of public buildings. The department

shall have an official seal, to be prepared by the secretary of state, as provided by law. The offices of the department shall be supplied with necessary postage, stationery and office furniture and appliances, to be paid for out of moneys appropriated therefor, and it shall have prepared for it by the state, such books and blanks as are required for carrying on the business of the department.

§ 14. **Salaries and expenses.**— The chairman of the commission shall receive an annual salary of six thousand dollars; each of the other commissioners shall receive an annual salary of five thousand dollars. The first and second deputy and secretary shall each receive an annual salary of three thousand five hundred dollars. The clerks, officers and other employees of the department shall receive the compensation fixed by the commission except as otherwise defined and established in this chapter and by the annual appropriation and supply bills. In the discharge of their official duties such commissioners, deputies, secretary, and the clerks, officers and other employees of the department shall have reimbursed to them their necessary traveling expenses and disbursements. Such salaries and expenses shall be paid by the state treasurer upon the warrant of the comptroller, out of moneys appropriated therefor in the same manner as the salaries and expenses of other officers, clerks and employees are paid.

§ 15. **General powers and duties of the commission.**— The commission shall

1. Have general supervision of all highways and bridges which are constructed, improved or maintained in whole or in part by the aid of state moneys.

2. Prescribe rules and regulations not inconsistent with law, fixing the duties of division engineers, district, county and town superintendents in respect to all highways and bridges composing the state and county systems and determining the method of the construction, improvement or maintenance of such highways and bridges. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officers affected thereby.

3. Compel compliance with laws, rules and regulations relating to such highways and bridges by highway officers and see that the same are carried into full force and effect.

4. Aid district, county and town superintendents in establishing grades, preparing suitable systems of drainage and advise

with them as to the construction, improvement and maintenance of highways and bridges.

5. Cause plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of bridges, when requested so to do by a district, county or town superintendent.

6. Investigate and determine upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of highways and bridges.

8. Compile statistics relating to the public highways throughout the state, and collect such information in regard thereto as they shall deem expedient.

9. Cause public meetings to be held at least once each year, in each district or county, for the purpose of furnishing such general information and instructions as may be necessary, regarding the construction, improvement or maintenance of the highways and bridges and the application of the highway law, and the rules and regulations of the department, and also for the purpose of hearing complaints. They shall notify the district or county superintendent of their intention to hold such meeting or meetings, specifying the date and the place thereof.

10. Aid at all times in promoting highway improvement throughout the state, and perform such other duties and have such other powers in respect to highways and bridges as may be imposed or conferred on them by law.

12. Prepare tables showing the total number of miles of highways in the state, by town and county, and file a copy of the same in the office of the comptroller.

§ 16. **Division of state; division engineers.**— The commission shall divide the state into not more than six divisions and shall appoint and assign to each division a division engineer. In making such division no county shall be divided. Each person so appointed as a division engineer shall be a practical civil engineer having had actual experience in the construction and maintenance of highways and bridges. The salary of such engineers shall be three thousand dollars per annum. An office may be maintained by such division engineers at a convenient place within each division as authorized by the commission. The salary and expenses of such engineers shall be paid out of moneys appropriated therefor upon the requisition of the commission. Each

division engineer shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an official undertaking in the sum of ten thousand dollars to be approved by the commission.

§ 17. **Duties of division engineers.**— Each division engineer shall devote his entire time to the performance of his duties. He shall, under the direction and control of the commission:

1. Make or cause to be made all surveys, maps, plans, specifications and estimates necessary or required for the improvement, construction and maintenance of state and county highways within the division for which he is appointed.

2. Examine, revise and approve all plans, specifications and estimates and proposals for the improvement, construction and maintenance of highways and bridges within his division, which may be submitted by the commission, pursuant to the provisions of this chapter, or the rules and regulations of the commission.

3. Examine and inspect, or cause to be examined and inspected, the work performed on any highways, and report to the commission as to whether the work has been done in accordance with the plans and specifications and contracts made therefor.

4. Approve and certify to the monthly estimates or allowances for work being performed under any contract let for the construction, improvement or maintenance of state and county highways.

5. Inspect, or cause to be inspected, all state and county highways, and report from time to time in respect thereto, when required by the commission.

6. Consult with district, county and town superintendents and other highway officers in respect to the proper methods of constructing, improving and maintaining highways and bridges.

7. Perform such other duties as may be prescribed by the commission.

§ 18. **Blank forms and town accounts.**— The commission shall prescribe and furnish blank forms of orders, reports and accounts and blank books, whenever in their judgment they are required for the convenience of their office and of highway officers.

§ 19. **Examination of accounts and records.**— The commission may, at such times as may be deemed expedient, cause an examination of all accounts and records kept as required by this chapter, and it shall be the duty of all county and town officers to produce all such records and accounts for examination and inspection, at any time on demand of a representative of the commission.

§ 20. **Condemnation of bridges.**—The commission shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the district or county superintendent, the town superintendent, or five residents of the town. If such bridge is found to be unsafe for public use and travel the commission shall condemn such bridge, and notify the district or county superintendent, the town superintendent and the supervisor of the town, of that fact. The district or county superintendent shall either prepare or approve plans, specifications and estimates for the construction or repair of such bridge without delay. The town shall provide for the construction or reconstruction of such bridge, as provided for by section ninety-three of this chapter.

§ 21. **Estimate of cost of maintenance of state and county highways.**—The commission shall annually cause to be inspected all state and county highways, either by the division engineer, or the district or county superintendent of the district or county in which such highways are situated and shall require a complete report of such inspection which shall show in detail the condition of the highway inspected, the necessary work to be performed in the repair and maintenance of such highways, and the estimated cost thereof. The commission shall revise said estimates and annually report to the legislature its estimated cost of such repair and maintenance for the ensuing year, as so revised, in detail by town and county.

§ 22. **Rules and regulations for state and county highways.**—The commission is hereby empowered to make rules and regulations from time to time for the protection of any state or county highway or section thereof. They may prescribe the width of tires to be used on such highways and they may prohibit the use of chains or armored tires by motor vehicles upon such highways, and any disobedience thereof shall be punishable by a fine of not less than ten dollars and not exceeding one hundred dollars, to be prosecuted for by the town, county, or district superintendent and paid to the county treasurer to the credit of the fund for the maintenance of such highways in the town where such fine is collected.

District or County Superintendents.

Section 30. Appointment of county superintendents.

31. District superintendents; appointment and salaries.

32. Removal of county superintendents.

33. General powers and duties of district or county superintendents.

§ 30. **Appointment of county superintendent.**— The board of supervisors of any county may appoint a county superintendent, determine the amount of the bond which he shall give, fix his salary, which shall be a county charge, and may remove such county superintendent for malfeasance or misfeasance in office, upon written charges, after an opportunity to be heard, not less than five days after the service upon such superintendent of a copy of such charges. The term of office of each superintendent shall be four years unless sooner removed by the board of supervisors as above provided, or by the commission as hereinafter provided.

§ 31. **District superintendents: appointment and salaries.**— If the board of supervisors of any county shall fail to appoint a county superintendent, the commission shall place such county in a district with such other counties as they deem best and appoint a district superintendent therefor. A county may be divided, but no district shall contain more than five thousand miles of public highways. Such district superintendents may be removed by the commission at its pleasure. The commission shall fix the salaries of such superintendents. Such salaries, together with expenses, shall be paid monthly in the first instance by the state treasurer upon the warrant of the comptroller and the amount thereof shall be annually apportioned by the commission among the counties contained in the district, in proportion to the number of miles of public highways of such county and in such district. The comptroller shall certify the amount so apportioned to the board of supervisors of each of such counties, and such board shall annually levy and cause to be collected as a county charge the proportionate part of such salary, and the treasurer of each such county shall pay the sum so raised into the state treasury.

§ 32. **Removal of county superintendent.**— The commission may remove a county superintendent for inefficiency, neglect of duty or misconduct in office, upon written charges after an opportunity of being publicly heard in his defense. A copy of such charges shall be personally served upon such superintendent and he shall be given not less than five days' notice of the time and place of the hearing. If upon such hearing it appears that the charges are sustained, the commission shall remove such superintendent and forthwith serve notice thereof by mail upon the superintendent and upon the chairman and clerk of the board of supervisors

of the county for which he was appointed. Such notice shall state specifically the grounds for such removal. The record of the proceedings upon such hearing shall be filed in the office of the commission. The commission shall appoint a district superintendent for such county or cause it to be added to some other district, and it shall thereupon be made subject to the jurisdiction of the district superintendent thereof until the board of supervisors shall appoint a new county superintendent to fill the vacancy caused by such removal.

§ 33. General powers and duties of district or county superintendents.—The district or county superintendent appointed as provided in this article shall, subject to the rules and regulations of the commission:

1. Have the general charge of all highways and bridges within his district or county and see that the same are improved, repaired and maintained, as provided by law, and have the general supervision of the work of constructing, improving and repairing bridges and town highways in his district or county.

2. Visit and inspect the highways and bridges in each town of his district or county, at least once in each year and whenever directed by the commission, and advise and direct the town superintendent how best to repair, maintain and improve such highways and bridges.

3. Examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and when requested by the commission submit samples of such formations and deposits and make a written report in respect thereto.

4. Establish, or cause to be established, such grades, and recommend such means of drainage, repairs and improvements, as seem to him necessary whenever requested by the town superintendent or town board.

5. Approve plans and specifications and estimates for the erection and repair of bridges and the construction and maintenance of town highways.

6. Report to the commission annually, on or before November fifteenth in each year, in relation to the highways and bridges in his district or county, containing such matter and in such form as may be prescribed by the commission, and file a duplicate

thereof with the clerk of the board of supervisors. Additional reports shall be made from time to time when required by the commission in respect to such matters as may be specified by them.

7. Whenever a public meeting for a county or district shall have been called by the commission he shall cause due notice to be mailed to each town superintendent and supervisor of the towns under his jurisdiction and give such notice by advertisement as shall be directed by the commission.

8. Inspect or cause to be inspected, if so directed by the board of supervisors, each county highway during its construction or improvement, and certify to the board of supervisors the progress of the work, and report to the commission any irregularities of the contractor or any failure on his part to comply with the terms of the contract.

9. Perform such other duties as may be prescribed by law, or the rules and regulations of the commission.

Rules and regulations of commission. It is provided that the powers and duties herein conferred or imposed upon the district or county superintendents shall be exercised or performed subject to rules and regulations of the commission. By § 15, subd. 2, *ante*, the commission is authorized to prescribe rules and regulations fixing the duties of district and county superintendents, "not inconsistent with law."

Gravel and stone deposits. The object of requiring county and district superintendents to report to the commission as to deposits and formations of gravel and stone in their counties or districts, is to inform the commission of the availability of good material for highway construction so as to enable them to determine the kind and cost of material to be used in the construction of State and county highways in such localities.

Public meetings are called by the commission pursuant to § 15, subd. 9, *ante*, and town superintendents are required to be present, under § 47, subd. 10, *post*.

Inspection of county highways during construction is required of county and district superintendents, only when requested by boards of supervisors, in which event they are representatives of the county for the purpose of ascertaining whether the county is getting what it pays for. Under the old law the town and county had no opportunity to be heard during the construction of a highway, and in practice the highway was accepted solely upon the determination of the State Engineer although the localities were required to pay one-half of the cost. When such a highway is properly completed it is provided in section 134 that the board of supervisors is to accept the same, and this inspection will aid the board in arriving at a proper determination.

Town Superintendent; General Powers and Duties.

Section 40. Election of town superintendent of highways.

41. Submission of proposition for appointment of town superintendent.
42. Term of office of town superintendent.
43. Vacancies; office of highway commissioner abolished.
44. Deputy town superintendent.
45. Compensation of town superintendent and deputy.
46. Removal of town superintendent.
47. General powers and duties of town superintendent.
48. Contracts for the construction of town highways.
49. Machinery, tools and implements.
50. Town superintendent may hire machinery.
51. Purchase of gravel and stone.
52. Obstructions and their removal.
53. Removal of obstructions from ditches, culverts and waterways.
54. Removal of noxious weeds and brush within the highways, and of obstructions caused by snow.
55. Assessment of costs against owners and occupants.
56. Wire fences to prevent snow blockades.
57. Entry upon lands by town superintendent.
58. Damages to owners of lands.
59. Damages for change of grade.
60. Drainage, sewer and water pipes, cattle passes or crossings in highways.
61. Trees and sidewalks.
62. Expenditures for sidewalks.
63. Allowances for shade trees.
64. Custody of shade trees.
65. Compensation for watering troughs.
66. Credit on private road.
67. Neglect or refusal to prosecute.
68. Erection of guide boards.
69. Measurement of highways and report.
70. Application for service of prisoners.
71. Construction and repair of approaches to private lands.
72. Unsafe toll bridges.
73. Actions for injuries to highways.
74. Liability of town for defective highways.
75. Action by town against superintendent.
76. Audit of damages without action.
77. Closing highways for repair or construction.

§ 40. **Election of town superintendent of highways.**— At the biennial town meeting held next after the taking effect of this chapter, there shall be elected in each town a town superintendent of highways. A successor to the town superintendent, so elected, shall be elected at each biennial town meeting held

thereafter in such town, unless the town shall have adopted as provided in section 41 a resolution that thereafter the town superintendent shall be appointed by the town board.

§ 41. Submission of proposition for appointment of town superintendent.— Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the town board of the town shall, upon the expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed.

§ 42. Term of office of town superintendent.— The term of office of a town superintendent elected or appointed, as provided in this article, shall be two years. If such town superintendent be elected at a town meeting held at the time of a general election, his term shall begin on the Thursday succeeding his election, or as soon thereafter as he shall have been officially notified of his election and shall have duly qualified. If such town superintendent shall have been elected at a town meeting held at any other time, his term of office shall begin on the first day of November succeeding his election. If such town superintendent shall have been appointed pursuant to a proposition adopted, as provided in the preceding section, his term shall likewise begin on the first day of November, and the town board shall meet prior to that day, for the appointment of such town superintendent.

§ 43. Vacancies; office of highway commissioner abolished.— Vacancies in the office of town superintendent shall be filled for the balance of the unexpired term. The office of highway commissioner in each town is hereby abolished, to take effect on and after November first, nineteen hundred and nine. Where the office of highway commissioner shall become vacant by expiration of term or otherwise, after the taking effect of this chapter, and prior to the said first day of November, nineteen hundred and nine, such vacancies shall be filled for a term to expire on such date. Highway commissioners in office when this chapter or any section hereof takes effect shall exercise the powers and perform the duties hereby conferred and imposed upon town superintend-

ents until the said first day of November, nineteen hundred and nine, and until their successors shall have duly qualified, whereupon such powers and duties shall cease and determine.

§ 44. **Deputy town superintendent.**— The town board of a town may, in its discretion, upon the written recommendation of the town superintendent, appoint a deputy town superintendent, to be nominated by such town superintendent, to assist him in the performance of his duties. Such deputy superintendent shall act as such during the pleasure of the town superintendent.

§ 45. **Compensation of town superintendent and deputy.**— The town board shall fix the compensation of such superintendent and his deputy, if one be appointed, which shall not be less than two nor more than five dollars per day. Such town superintendent and his deputy, if any, shall be paid the actual and necessary expenses incurred by them in the performance of their duties. Such compensation may be paid by the supervisor monthly, in advance of audit, from moneys levied and collected for such purpose, on accounts duly verified in the same manner as town accounts are required by law to be verified. Such accounts for compensation, together with accounts for expenses incurred by such town superintendent and his deputy, if any, verified as above provided, shall be subject to audit by the town board at its meeting held annually for the audit of accounts of town officers, and the balance due, as finally audited by the town board, shall be paid by the supervisor to such town superintendent, or deputy, if any, from funds available therefor.

§ 46. **Removal of town superintendent.**—A town superintendent may be removed by the town board upon written charges preferred by the commission, or by the district or county superintendent, for malfeasance or misfeasance in office. Such charges shall be presented in duplicate to the town clerk, one of which shall be filed in his office, and the other shall be served by him personally upon the town superintendent, together with a notice directing him to appear before the town board at a time and place stated therein. Such service shall be made at least five days prior to the time specified in such notice. The town board shall convene for the purpose of considering such charges within ten days after the filing thereof with the town clerk. The town board shall hear evidence in support and in defense of such charges and after such hearing shall enter an order in the office of the town clerk either sustaining or dismissing such charges. The entry of an order

sustaining the charges shall operate as a removal and the town board shall appoint another person to fill the vacancy caused thereby. The person so appointed shall hold office for the unexpired term or until the entry of a final order of a court of competent jurisdiction determining that the original town superintendent was wrongfully and illegally removed and directing his reinstatement. If the charges are dismissed, the town board shall notify the commission and the district or county superintendent of such fact. The town board shall also notify the commission and the district or county superintendent of the name of the person appointed to fill the vacancy caused by the removal of such town superintendent. An appeal may be taken by the commission or district or county superintendent, or by the town superintendent, from the order of the town board, to the county court by the filing of a notice of such appeal in the office of the town clerk within thirty days after the entry of such order. A copy of such notice of appeal shall be served personally or by mail upon the adverse party. Upon such appeal the county court shall consider the charges presented to the town board, and may hear evidence in support and in defense thereof. After such hearing the court shall make an order either affirming or reversing the order of the town board. A copy of such order shall be entered in the office of the town clerk. If the order reverse an order dismissing the charges, it shall direct the town board to remove the town superintendent and appoint a person to fill the vacancy caused thereby, within the time specified therein; if it reverse an order sustaining such charges, it shall direct the reinstatement of the town superintendent removed, to take effect upon the filing of the copy in said town clerk's office.

§ 47. General powers and duties of town superintendent.— The town superintendent shall, subject to the rules and regulations of the commission, made and adopted as provided in this chapter:

1. Have the care and superintendence of the highways and bridges in the town except as otherwise specially provided in relation to incorporated villages, cities and other localities.

2. Cause such highways and bridges to be kept in repair, and free from obstructions caused by snow and give the necessary directions therefor, and inspect the highways and bridges within the town, during the months of April and October of each year, or at such other time as the district or county superintendent may prescribe.

3. Divide the town into as many sections as may be necessary for the proper maintenance and repair of the highways therein, and the opening of highways obstructed by snow.

Obstructions caused by snow. The duty of keeping highways free from obstructions caused by snow is made by this subdivision as obligatory upon the town superintendent the same as keeping them in repair.

4. Employ such persons with teams and implements, as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the town board, as hereinafter provided, and provide for the organization and supervision of the persons so employed. He shall file a list of the names of the persons so employed, with the compensation paid to each, and the capacity in which they were employed in the office of the town clerk.

Payment of laborers. When an agreement has been entered into between the town board and the town superintendent, as provided in section 105, *post*, authorizing the expenditure of highway moneys at such places and in such manner as may be specified in such agreement, the town superintendent is authorized to employ such labor as may be necessary in making such repairs and improvement, and the wages are to be paid by the supervisor on the written order of the town superintendent.

Weekly or semi-monthly pay days should be established and provision made by the town superintendent and supervisor for the issue and payment of town highway orders upon such day.

5. Construct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.

Ditches, culverts and waterways in State and county highways are required to be kept open and free from obstructions at all times, by the town superintendent. See section 53, *post*. It is made unlawful for the owner or occupant of lands adjoining a highway to fill up any ditch or place any material of any kind or character therein so as to in any manner obstruct or interfere with the purposes for which it was made. See section 71, *post*.

6. Cause loose stones lying in the beaten track of every highway within his town to be removed at least three times each year between the first day of April and the first day of December. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought back into the track by road machines or other implements used in repairing such highways.

Injurious substances in highways. A person who willfully throws, drops or places, or causes to be thrown, dropped or placed, upon any road, highway,

street or public place, any glass, nails, pieces of metal or other substances which might wound, disable or injure any animal is guilty of a misdemeanor, Penal Code, section 661.

7. Cause noxious weeds growing within the bounds of the highway to be cut and removed, at least twice each year, once between the first and fifteenth day of July, and once between the first and fifteenth day of September. He shall also cause all briars and brush within the bounds of the highway to be cut and removed once between the first and fifteenth day of September in each year, as provided by section fifty-four of this chapter, unless otherwise directed by the commission.

8. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered on record in the town clerk's office.

9. Inspect all highways which are to be constructed or improved as state or county highways, when directed by the district or county superintendent, for the purpose of securing preliminary information to be used in preparing the plans and specifications for such highways, and mark or in some substantial manner designate the portions of such highways which may need special care and attention. He shall report to the district or county superintendent the condition of such highways and submit therewith such recommendations in respect thereto as may seem expedient. The district or county superintendent may require additional reports in respect to such highways whenever it seems to him to be necessary.

10. Attend public meetings called by the commission, held within the county, after receiving notice thereof from the district or county superintendent, and his expenses necessarily incurred thereby shall be a town charge.

11. Cause the monuments erected, or to be erected, as the boundaries of highways, to be kept up and renewed so that the extent of such highway boundaries may be publicly known, and erect and establish such new monuments as may be required by the district or county superintendent.

12. Collect all penalties prescribed by this chapter.

13. Report annually on such date as may be prescribed by the commission, prior to November fifteenth, to the district or county superintendent, in relation to the highways and bridges in his town, containing the matter and in the form to be prescribed by the commission.

14. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the commission, including the powers and duties heretofore exercised or performed by highway commissioners.

§ 48. **Contracts for the construction of town highways.**— The town board of any town may provide that the construction of new highways, or the permanent improvement or reconstruction of existing highways, the cost of which will exceed five hundred dollars, shall be done under contracts. All such contracts shall be awarded by the town superintendent, in accordance with estimates, plans and specifications to be furnished by the district or county superintendent, or by the commission, as provided in this chapter, to the lowest responsible bidders, after advertisement once a week, for three consecutive weeks, in a newspaper published in the town where the work is to be performed, or if no newspaper is published therein, in a newspaper published at some other place in the county, having the largest circulation in said town. All bids for such work shall be opened in public and shall be filed in the office of the town clerk. No such contract shall be awarded, unless it be approved by the district or county superintendent, as to its form and sufficiency. The person to whom such contract is awarded shall execute a bond to the town, in a sum equal to the amount of the contract, with two or more sureties to be approved by the town board, conditioned for the faithful compliance with the terms of the contract, and the plans and specifications and for a payment of all damages which may accrue to the town, because of a violation thereof. When such work is completed pursuant to the terms of such contract, and the plans and specifications therefor, and accepted by the district or county superintendent and town board, as being in accordance therewith, the cost of the work under the contract shall be paid out of moneys available therefor, in the same manner as other highway expenses. Payments made under such contract shall be upon certificates issued to the contractor by the district or county superintendent, to the effect that the work has been done under and in accordance with the terms of such contract, and the plans and specifications. All work done under any such contract shall be under the supervision of the district or county superintendent, or some person designated by him. The town superintendent shall file all contracts, awarded under this section or as provided in this chapter, for the construction, improvement or repair of town highways

and bridges, with the town clerk of the town within ten days after their execution.

Note: This section is intended to give town boards the option of having work amounting to more than \$500 done under direction of the town superintendent, or by contract, as may best serve the interests of the town.

§ 49. **Machinery, tools and implements.**—The town superintendent may, with the approval of the town board, purchase for the use of the town, stone crushers, steam rollers, traction engines, road machines for grading and scraping, tools and other implements, subject to the limitations prescribed in section ninety-four, which shall be paid for from moneys levied and collected or from the proceeds of bonds issued and sold for such purposes as provided in this chapter. No contract for the purchase of stone crushers, steam rollers or traction engines shall be valid, unless the district or county superintendent shall have approved thereof and endorsed his approval upon such contract. All road machines, stone crushers, steam rollers, tools and other implements owned either by the town or the highway districts therein, when this chapter takes effect, shall be used by the town superintendent in such manner and at such places in such town as he shall deem best. They shall be under the control of the superintendent and be cared for by him at the expense of the town. The town superintendent shall annually make a written inventory of all such machinery, tools and implements, indicating each article and stating the value thereof, and the estimated cost of all necessary repairs thereto, and deliver the same to the supervisor of the town on or before October thirty-first in each year. He shall at the same time file with the town clerk his written recommendations as to what machinery, tools and implements should be purchased for the use of the town, and the probable cost thereof. The town superintendent shall provide a suitable place for housing and storing all machinery, tools and implements owned by the town and cause the same to be stored therein, when not in use. Where there is an incorporated village constituting a separate road district, wholly or partly in a town which has purchased a stone crusher, steam roller or traction engine, the town board of such town may permit the use thereof by such village upon such terms as may be agreed upon.

§ 50. **Town superintendent may hire machinery.**—The town superintendent may, with the approval of the district or county superintendent, lease or hire stone crushers, steam rollers and

growing within the bounds of the highway, fronting such lands, once in the month of August in each year. It shall also be the duty of such owner or occupant to remove brush, shrubbery and other obstructions within the bounds of the highway, causing the drifting of snow upon said highway, before the first day of November in each year. If such owner or occupant fails to cut or remove such weeds or brush, or to remove such brush, shrubbery or other obstructions, causing the drifting of snow, as provided herein, the town superintendent of the town in which said lands are situated shall cause the same to be done and the expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner or occupant, and levied and collected, as provided in section fifty-five.

§ 55. **Assessment of cost against owners and occupants.**— The town superintendent shall assess the cost of,

1. Removing obstructions and moving and resetting poles and wires, pursuant to section fifty-two.

2. Cutting and removing noxious weeds, briars and brush and removing brush, shrubbery and other obstructions within the highways, causing the drifting of snow, pursuant to section fifty-four, against the owner, occupant or company neglecting to perform the duty imposed by the sections above referred to. Such town superintendent shall serve personally or by mail upon such owner, occupant or company, a written notice, stating that at a time and place specified therein, he will assess such cost against the owner, occupant or company neglecting to perform such duty. Such notice shall be served at least eight days previous to the time specified therein. If directed against a company, it may be served upon it at its principal place of business, or upon an agent of the company within the town. At the time and place so specified, he shall hear the parties interested, and shall thereupon complete the assessment, stating therein, the name of each owner, occupant or company, and the amount assessed against him or it, and shall return such assessment to the town clerk who shall present the same to the town board of his town, at its meeting held on the Thursday preceding the annual meeting of the board of supervisors. Such town board shall certify such assessment to the board of supervisors who shall cause the amount stated therein to be levied against such owner, occupant or company and any uncollected tax shall be a lien upon the land affected. The amount so levied shall be collected in the same

manner as other taxes levied by such board, and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed.

§ 56. **Wire fences to prevent snow blockades.**— The town superintendent, with the consent of the town board, may purchase wire for fences to be erected for the prevention of snow blockades, and the said town superintendent is hereby authorized to contract with the owners of the lands lying along the highways of their respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways and the replacing of such fences with wire fences. He may contract to deliver to such land owners fence wire to be used in the construction of such fences, without charge to said land owners, at the place of purchase, but he shall not agree to pay any part of the cost of the removal or construction called for by said contracts, or to make any payment to said land owners, as a compensation for the construction of fences or for posts. The amount to be expended for the purchase of such wire shall not exceed the sum of three hundred dollars in any one year, and such amount shall be included in the estimate for expenditures for removal of obstructions caused by snow, and other miscellaneous purposes, and paid from the money levied and collected therefor. The fences to be built, under the provisions of this section, shall be of not less than four strands of wire, nor more than nine strands, in the discretion of the town superintendent, approved by the town board, and the construction of said fences and their distance apart, shall be such as said town superintendent shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highway, it shall be the duty of the owner or owners of said fence or fences to immediately repair or replace the same. Whenever the town superintendent shall contract for the removal of any fence, under the provisions of this section, he shall file in the office of the town clerk a description of that portion of the highway to which said contract shall apply, and thereafter it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow. In no case shall the town superintendent approve of or permit the use of barb wire for such fences.

§ 57. **Entry upon lands by town superintendent.**— The town superintendent may, when directed by the district or county superintendent, and when authorized by the town board, enter

1. Upon any lands adjacent to any of the highways in the town, for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of such highways.

2. Upon the lands of any person adjoining rivers, streams or creeks, to drive spiles, throw up embankments and perform such other labor as may be necessary to keep such rivers, streams or creeks within their proper channels, and to prevent their encroachment upon highways or abutments of bridges.

3. Upon the lands adjoining a highway which, during the spring freshets or at a time of highwater are subject to overflow from such rivers, streams or creeks, to remove or change the position of a fence or other obstruction preventing the free flow of water under or through a highway, bridge or culvert, whenever the same may be necessary for the protection of such highway or bridge.

4. Upon any lands adjacent to highways to remove any fence or other obstruction which causes snow to drift in and upon such highways, and erect snow fences or other devices upon such lands to prevent the drifting of snow in or upon such highways.

§ 58. **Damages to owners of lands.**— Where lands are entered upon under the provisions of the preceding section, the town superintendent shall agree with the owner of such lands, subject to the approval of the town board, as to the amount of damages, if any, sustained by such owner in consequence of such entry in performance of the work authorized by such section, and the amount of such damages shall be a town charge. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid in the manner that damages are so ascertained, determined and paid, where new highways are laid out and opened and the town superintendent and land owners are unable to agree upon the amount thereof.

§ 59. **Damages for change of grade.**— In any town in which a town highway shall be repaired, graded and macadamized from curb to curb by the authorities of the town the owner or owners of the land adjacent to the said highway shall be entitled to recover from the town the damages resulting from any change of grade. A person claiming damages from such change of grade must present to the town board of such town a verified claim therefor within sixty days after such change of grade is effected.

The board may agree with such owner upon the amount of damages to be allowed him. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the supervisor of the town at least ten days before the hearing thereof. All proceedings subsequent to the appointment of commissioners shall be taken in accordance with the provisions of the condemnation law so far as applicable. Such town board, or such commissioners, shall, in determining the compensation, consider the fair value of the work done, or necessary to be done, in order to place the claimant's lands, or buildings, or both, in the same relation to the changed grade as they stood to the former grade, and make awards accordingly, except that said board or said commissioners may make an allowance for benefits derived by the claimant from such improvement. The amount agreed upon for such damages, or the award therefor together with the costs, if any, allowed to the claimant, shall be a charge against such town and the supervisor shall pay the same, if there be sufficient funds in his hands available, and if not, the town board shall borrow money for the payment thereof, as provided in section ninety-seven, or issue certificates of indebtedness therefor, as provided in section ninety-six. Bonds of the town to raise the money necessary to make such payment, and such bonds or such certificates of indebtedness shall bear a rate of interest not exceeding five per centum per annum payable semi-annually. Such bonds shall be in the same form, and shall be issued and sold in the same manner as other town bonds.

§ 60. **Drainage, sewer and water pipes, cattle passes or other crossings in highways.**—The town superintendent may, with the consent of the town board, upon the written application of any resident of his town or a corporation, grant permission for an overhead or underground crossing, or to lay and maintain drainage, sewer and water pipes under ground within the portion therein described of a town highway. If the highway is a state or county highway such permission shall be granted with the consent of the county, or district superintendent instead of the town board. Permission shall not be granted for the laying and maintaining of such pipes under the travelled part of the highway, except across the same, for the purposes of sewerage and

draining swamps or other lands, and supplying premises with water. Such permission shall be granted upon the condition that such pipes and hydrants or crossings shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before the laying of said pipes, or construction of such crossings, and that such applicant will keep such pipes and hydrants or crossing in repair and save the town harmless from all damages which may accrue by reason of their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway. The permit of the town superintendent, with the consent of the town board or county or district superintendent, and the acceptance of the applicant, shall be executed in duplicate, one of which shall be filed in the office of the town clerk and the other in the office of the district or county superintendent. In case the applicant shall fail to make any of the repairs required to be made under the permit, they may be made by the town superintendent at the expense of the applicant, and such expenses shall be a lien, prior to any other lien, upon the land benefited by the use of the highway for such pipes, hydrants or structures. The town superintendent may revoke such permit upon the applicant's failure to comply with any of the conditions contained therein.

§ 61. **Trees and sidewalks.**— The town superintendent may, by an order in writing, approved by a majority of the members of the town board, authorize the owners of property adjoining the highways, at their own expense, to locate and plant trees and locate and construct sidewalks along the highways, in conformity with the topography thereof, which order with a map or diagram, showing the location of the sidewalk and tree planting, certified by the town superintendent, shall be filed in the office of the town clerk, within ten days after the making of the order.

Willful injury to shade trees. A person who willfully cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the State, is guilty of a misdemeanor. Penal Code, § 640, subd. 2.

§ 62. **Expenditures for sidewalks.**— The town superintendent of any town may, with the consent of the town board, maintain

and repair existing sidewalks in such town, and the expense thereof shall be a town charge. The town board of any such town may on the petition of not less than twenty-five taxpayers of the town, by resolution, direct the town superintendent to construct a sidewalk along a described portion of any highway of the town, in a manner and not exceeding an expense to be specified in the resolution, and the expense of constructing such sidewalk shall be a town charge, and shall be paid in the same manner as other town charges.

§ 63. **Allowance for shade trees.**—There shall be allowed by the town superintendent, with the consent of the town board, to each such owner or occupant, who shall set out or transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or nut bearing trees suitable for shade trees, in conformity with the preceding section, the sum of one dollar for each three living trees so set out or transplanted, to be paid by the supervisors to such owner or occupant, upon the order of the town superintendent out of moneys levied and collected for miscellaneous purposes. Such allowance shall only be made for trees so set out or transplanted during the preceding year, and living and well protected from animals at the time of the allowance. Such trees shall be set out or transplanted not more than eight feet from the outside line of any highway three rods wide, and not more than one additional foot distant therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees. Trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner.

§ 64. **Custody of shade trees.**—The town superintendent shall have the full control of all shade trees in the public highways of the town, but not within the limits of an incorporated village, and shall prosecute complaints for malicious injury to, or unlawful acts concerning, public shade trees. Upon the recommendation of the town superintendent, the town board may, by resolution, appropriate a sum, not exceeding two hundred dollars, to be known as the "Shade Tree Fund." Such fund shall be placed in the hands of the supervisor as custodian and shall be expended by him upon the written order of the town superintendent, for the setting out and preservation of shade trees along the highways in such town.

§ 65. **Compensation for watering troughs.**—The town superintendent may, with the consent of the town board, authorize the owner or occupant of lands to construct and maintain a watering trough beside the public highway, to be supplied with fresh water, the surface of which shall be three or more feet above the level of the ground and easily accessible for horses with vehicles, but when possible, all such watering troughs shall be constructed on the lower side of the highway. Such watering trough shall be maintained by such owner or occupant and kept supplied with fresh water. The town superintendent shall annually give a written order upon the supervisor for three dollars to be paid to such owner or occupant by the supervisor, for maintaining such watering trough, and keeping the same supplied with fresh water, out of moneys levied and collected for miscellaneous purposes.

§ 66. **Credit on private road.**—Any person living upon a private road may be credited on account of his highway taxes in any year an amount equal to the value of the work which the town superintendent may deem necessary to be done in such year upon such road. The town superintendent shall issue to him a statement containing the name of the person, the location of the road, the amount of work so deemed necessary to be done, and the value thereof. Such statement shall be presented to the town board at its annual meeting for the audit of town accounts, and if approved by such board, and such work shall have been done, an order shall be issued directing the supervisor to pay the sum specified in such statement to the person therein named, or his assignee, out of moneys in the hands of the supervisor available for highway purposes. The amount so paid in any year shall not exceed the amount payable by the person named in such statement on account of moneys levied in such town for the repair and improvement of highways as provided in this chapter. This section shall not apply to private roads or rights of way over lands of the owner thereof used by him for his own convenience.

§ 67. **Neglect or refusal to prosecute.**—If the town superintendent shall neglect or refuse to prosecute for any penalty, knowing the same to have been incurred, he shall be liable to a penalty of ten dollars for every such neglect or refusal, which shall be recovered by action in the name of the town, by the supervisor, or by any taxpayer of the town who shall indemnify the town for the costs and expense of the action, in such manner as the supervisor may approve.

§ 68. **Erection of guide boards.**— The town superintendent may, with the consent of the town board, cause guide posts with proper inscriptions and devices to be erected at the intersections of such highways therein, as may be necessary, which shall be kept in repair by him at the expense of the town. Upon written application to him, of five resident taxpayers of any town or twenty resident taxpayers of the county in which such town is located, requesting the erection of one or more guide boards at the intersection of highways in such town, it shall be his duty to cause to be erected at the intersections mentioned in such application, such guide boards indicating the direction, distances and names of the towns, villages or cities to or through which such intersecting highways run. Such application shall designate the highway intersections at which such guide boards are requested to be erected, and may contain suggestions as to the inscriptions and devices to be placed upon such boards. The cost of the erection and maintenance of such boards shall be a town charge. If the town superintendent refuses or neglects for a period of sixty days after receiving such application to comply with the request contained therein, he shall, for such neglect or refusal, forfeit to the town, the sum of twenty-five dollars, to be recovered by the supervisor in the name of the town and the amount so recovered shall be set apart for the erection of such guide boards.

§ 69. **Measurement of highways and report.**— Within six months after the taking effect of this chapter, and as often as the commission shall direct, the town superintendent shall measure all highways of his town. Such measurements shall be made either by the use of a cyclometer or otherwise as the commission shall direct. He shall ascertain, and indicate in his report, the town highways which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned. He shall report in triplicate on forms to be prescribed and furnished by the commission, the total mileage of all highways within his town, specifying as above provided as to town highways, one of which shall be filed with the town clerk, one with the district or county superintendent, and one with the commission.

§ 70. **Application for service of prisoners.**—After satisfying himself that proper quarters can be secured, the town superintendent may, with the consent of the town board, request the supervisor of the town under the provisions of section ninety-

three of the county law, to procure the services of prisoners serving sentence in the county jail, for general work upon the public highways of the town.

§ 71. Construction and repair of approaches to private lands.—

The owners or occupants of lands shall construct and keep in repair all approaches or driveways from the highway, under the direction of the district or county superintendent, and it shall be unlawful for such owner or occupant of lands to fill up any ditch or place any material of any kind or character in any ditch so as to in any manner obstruct or interfere with the purposes for which it was made. The town superintendent may, when directed by the town board, construct and keep in repair such approaches and the expense thereof shall be a town charge.

§ 72. Unsafe toll bridge.—Whenever complaint in writing, on oath, shall be made to the town superintendent, of any town in which shall be in whole or in part any toll bridge belonging to any person or corporation, representing that such toll bridge has from any cause become and is unsafe for the public use, such town superintendent shall forthwith make a careful and thorough examination of such toll bridge, and if upon the examination thereof he shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, he shall thereupon give immediate notice to the owners of such toll bridge, or to any agent of such owners, acting as such agent in respect to such bridge, that he has, on complaint made, carefully and thoroughly examined the bridge, and found it to be unsafe for public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects safe and convenient for public use. For neglect to take prompt and effective measures so to repair the bridge, its owners shall forfeit twenty-five dollars, and shall not demand or receive any toll for using the bridge until the same shall be fully repaired. The town superintendent shall cause such repairs to be made and the owners of the bridge shall be liable for the expense thereof, and for the services of the superintendent, and upon the neglect or refusal to pay the same upon presentation of an account therefor, the town superintendent may recover the same by action, in the name of the town.

§ 73. Actions for injuries to highways.—The town superintendent shall bring an action in the name of the town, against any

person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.

§ 74. **Liability of towns for defective highways.**— Every town shall be liable for all damages to person or property sustained by reason of any defect in its highways or bridges, existing because of the neglect of any town superintendent of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action shall have been presented to the supervisor of the town within six months after the cause of action accrued. And no such action shall be commenced until fifteen days after the service of such statement.

§ 75. **Action by town against superintendent.**— If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highway or bridges, existing because of the neglect of any town superintendent, such town superintendent shall be liable to the town for the amount of the judgment, and interest thereon, but such judgment shall not be evidence of the negligence of the superintendent in the action against him.

§ 76. **Audit of damages without action.**— The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited unless it shall have been presented to the supervisor of the town within six months after it accrued, nor if any action thereon shall be barred by the statute of limitations. The town board may also audit any unpaid judgment heretofore or hereafter recovered against a town superintendent for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damage did not exist because of the negligence or misconduct of the superintendent against whom such judgment shall have been recovered.

§ 77. **Closing highways for repair or construction.**— If it shall appear necessary to a district or county superintendent to close a

highway which is being constructed, improved or repaired under this chapter so as to permit a proper completion of such work, he shall execute a certificate and file the same in the office of the town clerk in which such highway is situated. Such certificate shall state the necessity for the closing of such highway and describe the portion thereof to be closed; not more than two miles of any highway shall be closed at any one time. At the time of filing such certificate such district or county superintendent shall notify the town superintendent to close the highway, who shall thereupon close the same to public travel by erecting suitable obstruction and posting conspicuous notices to the effect that the highway is closed. The town superintendent shall, if practicable, provide a new location for, and construct a temporary highway to be used by the traveling public in lieu of the closed highway and may erect temporary bridges when necessary or cause other existing highways to be used, when so directed by the district or county superintendent. For the purpose of locating, constructing and erecting such temporary highway or bridge the town superintendent may enter upon the lands adjoining or near to the closed highway and may, with the approval of the town board, agree with the owners of such land as to the damages if any caused thereby. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid as provided in section fifty-eight. When such highway shall have been closed to the public as provided herein any person who disregards the obstruction and notice, and drives, rides or walks over the portion of the highway so closed shall be guilty of a misdemeanor.

Highway Moneys; State Aid.

- Section 90. Estimate of expenditures for highways and bridges.
91. Duties of town board in respect to estimates; levy of taxes.
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- 107. Reports of supervisor as to highway moneys.
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- 109. Duty of town clerk.
- 110. Compensation of supervisor and town clerk.
- 111. Additional expenditure for improvement, repair and maintenance of town highways.

§ 90. Estimate of expenditures for highways and bridges.—

The town superintendent shall annually, on or before the thirty-first day of October, make a written statement in respect to the amount of money which should be raised by tax in the town for the ensuing year, beginning on said first day of November, for the purposes therein set forth which shall be filed with the town clerk. Such statement shall specify:

1. The amount of money necessary to be levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. Such amount shall not be less than an amount which when added to the amount of money to be received from the state, under the provision of section one hundred and one, will equal thirty dollars for each mile of highways within the town, outside the limits of incorporated villages, except that no town having an assessed valuation of three thousand seven hundred and fifty dollars or less per mile outside of incorporated villages shall be required to levy and collect a tax under this subdivision in excess of four dollars on each thousand dollars of assessed valuation.

2. The amount of money necessary to be levied and collected for the repair and construction of bridges, having a span of five feet or more.

3. The amount of money necessary to be levied and collected for the purchase, repair and custody of stone crushers, steam rollers, traction engines, road machines for grading and scraping, tools and implements.

4. The amount of money necessary to be levied and collected for the removal of obstructions caused by snow and for other miscellaneous purposes.

The amounts specified in such statement shall not exceed the limitations prescribed in section ninety-four. If the town superintendent is of the opinion that an amount in excess of the limi-

tations therein prescribed be raised by tax he shall include in his statement his reasons therefor in detail.

Change in method of highway taxation. One of the objects sought by this law is the abolishing of the old labor system of taxation and substituting in place thereof in all towns the money system of raising highway taxes. This law has affected the method of highway taxation in less than three hundred of the nine hundred and thirty-three towns of the State. In other towns the money system is in force when this chapter takes effect. In towns adopting the money system, under the former law, the amount of the tax to be levied and collected in the town was to be determined by the commissioner or commissioners of highways and the town board. See former Highway Law, § 53. The minimum amount to be collected in such towns for the repair of highways was required, by that section, to at least equal one-half the value of the commutation rates, of the highway labor which should be assessable under the labor system. This section of the former law did not, nor does the present law, prescribe the maximum amount which could be raised by tax for the repair and maintenance of highways.

If it became necessary to raise money by tax upon the town for other purposes than the repair and maintenance of highways, authority therefor, either expressed or implied, had to be found in the various more or less conflicting provisions of the former law. The new law seeks to eliminate this confusion by placing the initiative with the town superintendent, making it his duty to present to the town board in a formal statement, the amount, which in his opinion, should be raised in the town during the ensuing year for the purposes specified therein. This statement is in the nature of a highway budget. It becomes effectual and binding upon the town when finally approved by the town board. Upon such approval it is to be submitted to the board of supervisors who thereupon must cause the amounts specified in the statement to be levied and collected in the town in the same manner as other charges against the town are levied and collected. It is thus provided that an amount sufficient to properly administer highway affairs in the town for the ensuing year will be collected and ready for use in the hands of the supervisor. This statement must be submitted on or before the thirty-first day of October, which brings it to the attention of the town board so that the town board may act upon it at its regular meeting on the Thursday preceding the annual meeting of the board of supervisors. The levy is made by the board of supervisors at its annual meeting and when the tax warrant reaches the hands of the collector it provides for the collection of money sufficient to take care of highway matters during the ensuing year. Such moneys will be paid over to the supervisor, for the most part, in the months of January, February or March, prior to the time when active operations upon the highways are required to be begun.

§ 91. **Duties of town board in respect to estimates; levy of taxes.**—The town board, at its meeting held on the Thursday succeeding general election day in each year, shall consider the estimates contained in such statement. It may by a majority vote

of the members thereof, approve such statement, or increase or reduce the amount of any of the estimates contained therein, subject to the limitations prescribed in section ninety-four. The statement as thus approved, increased or reduced shall be signed in duplicate by a majority of the members of the town board, one of which shall be filed in the office of the town clerk, and the other shall be delivered to the supervisor. The town clerk shall make and transmit a copy of such statement to the commission. The supervisor shall present such statement to the board of supervisors, and such board shall cause the amounts therein, subject to the limitation requiring a vote of the electors as hereafter provided, to be assessed, levied and collected in such town in the same manner as other town charges, and such amounts shall be expended for the purposes specified in such statement. The warrant for the collection of taxes in such town shall direct the payment of the money so collected to the supervisor of the town, to be held by him and paid out for the purposes specified in such statement, as provided in this chapter.

§ 92. **Additional tax.**—Whenever the town superintendent and the town board shall determine that the sum of one thousand dollars will be insufficient to pay the expenses actually necessary for the removal of obstructions caused by snow and the prevention of such obstructions, and whenever they shall determine that the amounts levied and collected for any of the purposes mentioned in the statement presented to the board of supervisors, as provided in the preceding section, are insufficient to pay the expenses necessarily incurred for any of the purposes therein specified they may cause a vote to be taken by ballot at a biennial town meeting or at a special town meeting duly called therefor, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town as shown by the last assessment-roll thereof.

§ 93. **Extraordinary repairs of highways and bridges.**—If any highway or bridge shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel, or if any bridge be condemned by the commission, as provided in this chapter, the town superintendent shall cause the same to be immediately repaired or rebuilt with the approval of the town board. Such highway or bridge shall be so repaired or rebuilt in accordance with the directions or the plans and

specifications prepared or approved by the district or county superintendent; except if the bridge to be repaired or rebuilt is one which has been condemned by the commission, as provided in this chapter, the same shall be repaired or rebuilt in accordance with plans and specifications to be prepared or approved by the commission. If the expense of repairing or rebuilding a bridge hereunder shall exceed five hundred dollars, it shall be done under a written contract therefor, which must be approved by the town board. The town clerk shall prepare a statement showing the probable cost of improving, repairing or rebuilding such highway or bridge, which statement shall be signed in duplicate by a majority of the members of the town board, one of which duplicates shall be filed with the town clerk and one be delivered to the supervisor. The town clerk shall make a copy of such statement and transmit the same to the commission. The supervisor shall present such statement to the board of supervisors, who shall cause the amount contained in such statement to be assessed, levied and collected in the same manner as amounts levied and collected for other highway and bridge purposes, as provided by law. The amount so raised shall be paid to the supervisor to be expended for the purposes specified in such statement.

§ 94. **Limitations of amounts to be raised.**— The amounts to be raised by tax upon the vote of a town board, as provided in this article, shall be subject to the following limitations:

1. The amount to be levied and collected in each year for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, shall not be less than the amount prescribed under subdivision one of section ninety.

2. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair and construction of a bridge unless duly authorized by vote of a town meeting.

3. Not more than five hundred dollars shall be levied and collected in any one year in any town for the purchase or repair of stone crushers, steam rollers, traction engines or road machines for grading and scraping, tools and implements, unless duly authorized by the vote of a town meeting.

4. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair or construction of any highway or bridge which has been damaged or de-

stroyed as provided in section ninety-three or which has been condemned by the commission as provided in this chapter, unless duly authorized by vote of a town meeting.

Debts in excess of limitation. A town superintendent has no general authority to bind the town by his contracts. He must find his authority in the statute, and those who deal with him, and with the other officers of the town are presumed to know this limitation of power. See *People ex rel. Everett v. Supervisors*, 93 N. Y. 397 (1883); *Berlin Bridge Co. v. Wagner*, 57 Hun, 346, 10 N. Y. Supp. 840 (1890). If he and the town board attempt to raise by tax more money than the limit prescribed by this section, the levy would be invalid, and the collection of the tax might be legally prevented.

§ 95. Submission of propositions at town meetings.—A proposition to authorize the levy and collection of an amount greater than that specified in the preceding section for any of the purposes therein mentioned may be submitted upon the written application of twenty-five taxpayers upon the last town assessment-roll or by a majority of the members of the town board, at a biennial town meeting or a special town meeting duly called as provided by law. The provisions of the town law relating to the submission of town propositions at a biennial or special town meeting shall apply to the submission of such propositions. If such proposition be adopted the town board shall include in the estimates contained in the next statement submitted by it to the board of supervisors, as provided in section ninety-one, the amounts authorized to be raised by such proposition for the purposes therein stated, and thereupon such amounts shall be levied and collected, and paid to the supervisor, to be expended by him as directed by such proposition.

§ 96. Borrowing money in anticipation of taxes.—The supervisor may, when authorized by the town board, borrow money in anticipation of taxes to be levied and collected, on the credit of the town, and issue certificates of indebtedness therefor in the following cases:

1. When an additional sum is directed to be levied and collected by a vote of a town meeting as provided in section ninety-two.

2. When an amount necessary for the payment of expenses incurred in the improvement, repair and rebuilding of a highway or bridge has been directed to be levied and collected as provided in section ninety-three.

3. When a proposition has been adopted at a town meeting as provided in section ninety-five authorizing the levy and collection of an amount greater than that specified in section ninety-four for any of the purposes therein mentioned.

Such certificates of indebtedness shall be signed by the supervisor and the town clerk and shall bear interest at a rate not exceeding six per centum for a period not exceeding one year. The amount so borrowed shall be paid out by the supervisor for the purposes for which the taxes, in anticipation of which such certificates were issued, is to be levied and collected. The principal and interest of such certificates shall be paid by the supervisor immediately upon the collection of the taxes levied for such purposes.

§ 97. Towns may borrow money for bridge and highway purposes.—A proposition may be submitted at a regular or special town meeting in the manner provided by the town law, authorizing the town to borrow money upon its bonds, or other obligations, to be expended for the following purposes:

1. Constructing, building, repairing or discontinuing any highway or bridge therein, or upon its borders.
2. Repairing or rebuilding any highway or bridge which shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel.
3. Repairing or rebuilding any bridge which has been condemned by the commission, as provided in this chapter.
4. The purchase of stone crushers, steam rollers and traction engines.

The vote upon any such proposition shall be by ballot. If any such proposition shall be adopted, the board of supervisors, upon the application of the town board, shall by resolution authorize the town to issue bonds not exceeding the amount specified in said proposition, which shall be sufficient to refund and pay any temporary loan or certificate of indebtedness, and to provide for the completion of any work authorized. There shall accompany such application a statement signed by a majority of the members of the town board, and certified by the town clerk, containing a copy of the proposition submitted, as above provided, the vote for and against the same, and specifying the amount which it is estimated will be required to be expended, pursuant to such proposition. If the highway or bridge, proposed to be constructed, built, repaired or discontinued, is situated in two or more towns in the same county, the board of supervisors shall, if application be made by each of such towns, apportion the expense thereof among such towns, in such proportion as it shall deem to be just. If the town adopting any such proposition shall contain any portion

of the land of the forest reserve, the board of supervisors shall not authorize such town to borrow moneys without the written approval of the forest, fish and game commissioner, except in payment of a debt lawfully incurred by the town.

§ 98. **Issue and sale of town bonds.**— The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such obligations as they shall become due. The supervisors and town clerk shall each keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par and apply the proceeds thereof for the purposes for which they were issued. Not more than five hundred dollars of such proceeds shall be expended upon any highway or bridge, except in pursuance of a contract executed by the town superintendent as provided in section forty-eight.

§ 99. **Assessment of village property.**— In any town in which there may be an incorporated village, which forms a separate road district, and wherein the roads and streets are maintained at the expense of such village, all property within such village shall be exempt from the levy and collection of taxes levied in the town, as provided by section ninety-one of this article, for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The assessors of such town shall indicate in a separate column the value of the real and personal property included in such incorporated village.

§ 100. **Statement by clerk of board of supervisors.**— The clerk of the board of supervisors of each county shall, on or before the first day of January of each year, transmit to the state comptroller and the commission a statement, signed and verified by the chairman of the board, and certified by the clerk, which shall state the name of each town, the assessed valuation of real property, and the assessed valuation of personal property, each separately, in the towns outside incorporated villages, and the amount of tax levied therein for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The towns' valuation of real property to be used in such statement shall be the valuation thereof, as equalized by the boards of supervisors, or other competent authority, during the year prior to the levy of taxes upon which is based the

determination of the amounts to be paid to the several towns, as provided in this article.

Object of statement. The purpose of this statement is to afford the state comptroller and the commission information sufficient to permit a payment to each town of the amount to which it is entitled under section 100. The amount so to be paid to each town is based upon the amount of taxes levied therein for the repair and improvement of highways. The final estimate of the amounts to be raised for highway purposes within the town being approval by the town board, and submitted to the board of supervisors it becomes the duty of the board to levy a tax upon the town sufficient to meet highway requirements during the ensuing year. The amount of taxes levied for the repair and improvement of highways should be kept separately from the taxes levied for the other purposes mentioned in such estimate so that the clerk of the board of supervisors may prepare the statement required by this section.

State aid is not only allowed on account of moneys raised for the repair and improvement of highways. If an additional amount is raised for such repair and improvement, as provided in section 92, it should be included in the statement.

§ 101. **Amount of state aid.**— There shall be paid by the state to the several towns, in the manner hereinafter provided, an amount based upon the amount of taxes levied therein for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, and to be determined as follows:

1. In towns where the assessed valuation of real and personal property, exclusive of such property in incorporated villages, shall be less than five thousand dollars for each mile of highways in such towns, outside of incorporated villages, an amount equal to the amount of such taxes.

2. In towns where such assessed valuation shall be five thousand dollars or over and less than seven thousand dollars for each mile of such highways, an amount equal to ninety per centum of the amount of such taxes.

3. In towns where such assessed valuation shall be seven thousand dollars or over and less than nine thousand dollars for each mile of such highways, an amount equal to eighty per centum of the amount of such taxes.

4. In towns where such assessed valuation shall be nine thousand dollars or over and less than eleven thousand dollars for each mile of such highways, an amount equal to seventy per centum of the amount of such taxes.

5. In towns where such assessed valuation shall be eleven thousand dollars or over and less than thirteen thousand dollars for each mile of such highways, an amount equal to sixty per centum of the amount of such taxes.

6. In towns where such assessed valuation shall be thirteen thousand dollars or over for each mile of such highways, an amount equal to fifty per centum of such taxes. Provided that no town shall receive from the state in any year, under this section, an amount exceeding an average of twenty-five dollars per mile, for the total mileage of its highways outside of incorporated villages, except that in towns where the assessed valuation of real and personal property therein, exclusive of such property in incorporated villages, averages more than twenty-five thousand dollars for each mile of highways therein outside of such villages, the amount paid hereunder shall not exceed one-tenth of one per centum of such assessed valuation.

§ 102. **Mileage and assessed valuation.**—The mileage of highways in towns to be used in determining the amounts to be paid to such towns under the provisions of this article shall be the tables of mileage heretofore prepared by the state engineer, until the corrected tables of mileage prepared as provided in section fifteen of this chapter are filed. Such tables and all corrections thereof shall be filed with the commission and comptroller. The assessed valuation of real property to be used in determining such amounts shall be the valuation thereof, equalized as provided in section one hundred and forty-one of this chapter, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.

§ 103. **Payment and distribution of state money.**—The comptroller shall determine the amount due to the several towns, under the provisions of this article, and shall draw his warrant upon the state treasurer in favor of the county treasurer of each county for the total amount to be paid to the towns in such county, as so determined by him, and shall indicate the amount to be paid to each town. The county treasurer shall pay to the supervisor of each town the amount to which such town is entitled, as determined and indicated by the comptroller. No such payment shall be made until the supervisor has filed in the office of the county treasurer a certified copy of the undertaking given by him, as provided in this article.

§ 104. Custody of highway moneys; undertaking of supervisor.—

All moneys levied and collected, as provided in this article, all moneys collected as penalties under this chapter, or received from any other source and available for highway, bridge and miscellaneous purposes and all moneys received from the state, as provided in section one hundred and one, shall be paid to the supervisor, who shall be the custodian thereof, and accountable therefor. Before receiving any such moneys the supervisor shall give an undertaking to the town in an amount to be specified by the commission and with such sureties, as shall be approved by the town board, conditioned for the faithful disbursement, safekeeping and accounting of the moneys so received by him. Such undertaking shall be filed in the office of the town clerk and a certified copy thereof shall be filed in the office of the county treasurer before any moneys received from the state shall be paid to him, and also in the office of the commission. In case of a failure of the supervisor to faithfully disburse, safely keep or account for moneys received from the state the commission may bring an action on such bond in the name of the town.

§ 105. Expenditures for repair and improvement of highways.—

The moneys levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, and the moneys received from the state, as provided by section one hundred and one, shall be expended for the repair and improvement of such highways, sluices, culverts and bridges, at such places and in such manner as may be agreed upon by the town board and town superintendent. The town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which such moneys shall be expended. Such agreement shall be written and signed in duplicate by a majority of the members of the board so constituted, and shall be approved by the commission, before the same shall take effect. One of such duplicates shall be filed in the office of the town clerk and one in the office of the district or county superintendent. Such moneys shall be paid out by the supervisor on the written order of the town superintendent in accordance with such written agreement.

§ 106. Expenditures for bridges and other highway purposes.—

The moneys levied and collected, or raised by the issue and sale of bonds or certificates of indebtedness in anticipation of taxes, as provided in this article, for purposes other than the

repair or improvement of highways, as specified in the preceding section, shall be paid out by the supervisor upon the written order of the town superintendent after audit of the town board. Such audit shall be made on verified accounts presented to the town board at a regular or special meeting called for such purpose by the supervisor, or in his absence, by the town clerk, upon the request of the town superintendent. An account shall not be so audited or paid unless the expenditure be in accordance with the annual estimate of the town superintendent, as approved or modified by the town board, or be authorized by the town board or by a vote of a town meeting, as provided in this article, or be lawfully a charge upon the town. Except as herein otherwise provided the provisions of the town law relating to the audit of town accounts and claims shall apply to accounts and claims against the town arising under this chapter.

§ 107. **Reports of supervisor as to highway moneys.**—The supervisor shall present to the town board at its meeting held in each year, for considering the estimates contained in the statement of the town superintendent, as provided in section ninety-one, a verified report showing:

1. The moneys received from the state, as provided in section one hundred and one during the year ending October thirty-first.

2. The moneys received by him during such year on account of taxes levied and collected and from the issue and sale of bonds and certificates of indebtedness in anticipation of taxes, for highways, bridges, purchase and repair of machinery, tools and implements, the removal of obstructions caused by snow and for miscellaneous purposes.

3. The moneys received by him during such year as penalties recovered pursuant to this chapter, or from any other source and available for highway purposes in his town.

4. The expenditures during such year for the improvement, repair and maintenance of highways, for the maintenance and repair of bridges, for the construction of new bridges, for damages and charges in laying out, altering and discontinuing highways, for the removal of obstructions caused by snow, for the purchase of machinery, tools and implements, for the rental or hire of stone crushers, steam rollers and traction engines, for town superintendents' salary or compensation and audited expenses, for allowances as fees on account of receiving and disbursing highway moneys, or for other highway purposes.

5. All machinery, tools and implements owned in whole or in part by the town, the present value of each article thereof, and the estimated cost of all necessary repairs thereto, as shown by the annual inventory of the town superintendent.

The form of such report shall be prescribed by the commission. Such report shall be filed in the office of the town clerk within three days after the presentation thereof and shall be open to public inspection during the office hours of such town clerk and a duplicate shall at the same time be mailed to the commission. A certified copy of such report shall also be filed by the supervisor with the clerk of the board of supervisors, who shall cause the same to be printed in the next issue of the annual proceedings of the board of supervisors. The town board shall cause a certified copy of the report to be published in a newspaper published in the town, or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town. The expense of such publication, which shall not exceed ten dollars, shall be a town charge. The clerk of the board of supervisors shall transmit three copies of the journal of the proceedings of the board containing such report to the commission and three copies to the comptroller.

The report is to be presented at the meeting of the town board held on the Thursday succeeding general election day in each year. This is the annual audit meeting of the board in most towns. It is at this meeting that the estimate of the town superintendent is presented and considered. The result is that the town board at the time that it revises the town superintendent's estimate for the succeeding year has before it the report of the supervisor as to the expenditures of town moneys for highway purposes in the preceding year.

§ 108. **Highway accounts, forms and blanks.**— The commission shall prescribe the method of keeping town accounts of moneys received and expended, as provided in this article, for highways, bridges, purchase, leasing, rental or hire and repair of machinery, tools and implements, the removal of obstructions caused by snow, and miscellaneous purposes, which shall be uniform, so far as practicable, throughout the state. Such commission may adopt forms and blanks for keeping such accounts. The commission shall also prescribe the form of order to be made by the town superintendent, upon the supervisor, and the form of the agreement to be entered into by the town board and town superintendent as provided in section one hundred and five. The town

superintendent and supervisor shall keep their accounts in the method, and shall use the blanks and forms, prescribed by the commission. All orders and records of accounts shall be filed in the town clerk's office and preserved as a part of the town records.

§ 109. **Duty of town clerk.**— It shall be the duty of the town clerk, annually, between the fifteenth day of November, and the fifteenth day of December, to transmit to the commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office.

§ 110. **Compensation of supervisor and town clerk.**— The supervisor and town clerk of each town shall receive annually, as compensation for services under this chapter in lieu of all other compensation and fees, an amount to be fixed by the town board. Such compensation shall be a town charge.

§ 111. **Additional expenditure for improvement, repair and maintenance of town highways.**— Upon the written application of twenty-five taxpayers of a town, filed with the town clerk, the electors thereof may, at a regular or special town meeting, vote by ballot upon a proposition for the expenditure of a sum, not exceeding one-third of one per centum of the total taxable property of the town, including incorporated villages, in addition to the sum authorized by this chapter for the improvement, repair and maintenance of town highways in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the amount specified therein shall be a town charge and shall be levied and collected in the same manner as other town moneys, and when collected shall be paid to the supervisor and expended for the purposes specified in such proposition as provided in this chapter.

The object of this section is to authorize the raising of a special amount for the repair, improvement and maintenance of town highways. It permits of a submission to the vote of a town meeting of the question as to the amount which shall be expended each year upon the town highways, whenever it is thought desirable to make more extensive improvements than the town board and town superintendent have decided upon. This section permits a town meeting to control the amount to be expended where it seems that the town board has been too conservative in its estimates.

State and Count . . .

- Section 120. Highways to be constructed or improved by the state.**
121. Construction or improvement of state highways.
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§ 120. Highways to be constructed or improved by the state.—
 The highways which have been heretofore constructed or improved under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory

thereof, which are included in the routes hereinafter described, together with such other highways as are constructed or improved by the commission in accordance with the routes set forth and described in this section, shall be state highways and shall be constructed or improved at the sole expense of the state as provided in this article. Such routes are hereby set forth and described as follows:

Route 1. Commencing at a point on the dividing line between Westchester county and New York, and running thence northerly through Mount Vernon to Eastchester road, thence northerly along Eastchester road, thence westerly in Eastchester to Post road, thence northerly along Post road to White Plains, thence southeasterly along Westchester avenue to Purchase street, thence northerly by Purchase street, by Rye lake and King street to state road, thence northerly by same to Armonk, thence easterly and northeasterly through the town of North Castle to Bedford village, thence northerly to Katonah, thence along the east side of the Croton river by Golden's bridge and Purdy's station to a point on the dividing line between Putnam and Westchester counties at or near Croton Falls, running thence northerly through the eastern portion of Putnam county by the way of Brewster, to a point on the dividing line between Dutchess and Putnam counties at or near Patterson, running thence northerly by the way of Pawling, Wingdale, Dover Plains, Amenia, to a point to be determined by the commission, on the dividing line between Columbia and Dutchess county, running thence northerly in Columbia county by the way of Copake to Chatham, thence northwesterly to a point at or near Valatie, running thence northerly to a point to be determined by the commission, on the dividing line between Rensselaer and Columbia counties, running thence northerly and northwesterly through the southwestern portion of Rensselaer county to a point to be determined by the commission on the Hudson river opposite or nearly opposite the city of Albany.

Route 2. Commencing at Jerome avenue on the dividing line between Westchester county and New York city and running thence northerly along Jerome avenue and Central Park avenue to Hartsdale, thence along the Sprain road and Landers road to Fair Grounds, thence northerly to cross road between Greenburgh, and Mount Pleasant, thence westerly along the same to the Saw Mill River road and the Tarrytown Lake road to Bedford road, thence along the Sleepy Hollow road northerly and westerly to the

Albany post road, thence northerly along Albany post road through Briar Cliff, Ossining and Croton Landing, thence along Old Yorktown road to Cornell Dam, thence along westerly side of Croton lake to Dixie Hill, thence northerly along Croton avenue to Crompound road, thence westerly along Crompound road through Peekskill to Albany post road, thence northerly from Peekskill, to a point to be determined by the commission, on the dividing line between the towns of Phillipsburg,* Putnam county, and Cortlandt, Westchester county, running thence northerly through the western portion of Putnam county to a point to be determined by the commission, on the dividing line between Dutchess and Putnam counties, running thence northerly by the way of the city of Poughkeepsie and Rhinebeck, to a point to be determined by the commission, on the dividing line between Columbia and Dutchess counties, running thence northerly, northeasterly and northwesterly by the way of Claverack, to the city of Hudson, running thence northeasterly from the city of Hudson to a point at or near Valatie, connecting with route number one, as above described.

Route 3. Commencing at a point to be determined by the commission, on the dividing line between the town of Orangetown, Rockland county, and the state of New Jersey, running thence northerly through the eastern portion of Rockland county by the way of points at or near Nyack and Haverstraw, to a point to be determined by the commission, on the dividing line between Orange and Rockland counties, running thence northerly through the eastern portion of Orange county to the city of Newburgh, thence northerly from the city of Newburgh to a point to be determined by the commission, on the dividing line between Ulster and Orange counties, running thence northerly through the eastern portion of Ulster county to the city of Kingston, running thence northerly from the city of Kingston to a point to be determined by the commission, on the dividing line between Greene and Ulster counties running thence northerly through the eastern portion of Greene county to points at or near Catskill, Athens and Coxsackie, to a point to be determined by the commission, on the dividing line between Albany and Greene counties, running thence northerly to the city of Albany.

Route 4. Commencing at a point to be determined by the commission on route number three, running thence through Orange county by the way of Middletown to a point to be determined by

* So in original.

the commission, on the dividing line between Sullivan and Orange counties, running thence westerly and northerly through Sullivan county by the way of the Monticello to a point to be determined by the commission, on the dividing line between Delaware and Sullivan counties, thence to Deposit, on the dividing line between Broome and Delaware counties, running thence westerly by the way of Windsor to the city of Binghamton, running thence westerly from the city of Binghamton by the way of Lestershire and Endicott, to a point to be determined by the commission, on the dividing line between Tioga and Broome counties, running thence westerly through the southern portion of Tioga county, to a point to be determined by the commission, on the dividing line between Chemung and Tioga counties, running thence westerly and northwesterly through the southern portion of Chemung county, to the city of Elmira, running thence northerly from the city of Elmira to a point at or near Horseheads, running thence westerly to a point to be determined by the commission on the dividing line between Steuben and Chemung counties, running thence westerly and northwesterly by the way of Corning, Addison, and Canisteo, to the city of Hornell, running thence northwesterly and southwesterly from the city of Hornell to a point at or near Almond on the dividing line between Allegany and Steuben counties, running thence southwesterly to Wellsville, running thence northwesterly and westerly by the way of Belmont, Belvidere and Friendship and Cuba, to a point to be determined by the commission on the dividing line between Cattaraugus and Allegany counties, running thence southwesterly to the city of Olean, running thence westerly and northwesterly from the city of Olean by the way of Salamanca, to a point to be determined by the commission, on the dividing line between Chautauqua and Cattaraugus counties, running thence westerly to the city of Jamestown, thence northwesterly by the way of Mayville, to Westfield.

Route 5. Commencing at the city of Kingston, running thence northwesterly by the way of West Hurley, Shokan and Pine Hill, to a point to be determined by the commission, on the dividing line between Delaware and Ulster counties, running thence westerly to Margaretville, running thence northerly by the way of Roxbury to Grand Gorge, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schoharie and Delaware counties, running thence northwesterly and westerly to a point to be determined by the commission, on

the dividing line between Delaware and Schoharie counties, running thence northwesterly and westerly by the way of Harpersfield, North Kortright and Davenport, to a point to be determined by the commission, on the dividing line between Otsego and Delaware counties, running thence to Oneonta, Otsego county, running thence northeasterly along route number seven to Colliers; running thence northerly in Otsego county by the way of Coopers-town and Richfield Springs to a point to be determined by the commission, on the dividing line between Herkimer and Otsego counties; running thence northerly to Herkimer connecting with route number six.

Route 6. Commencing at a point to be determined by the commission at the city of Albany, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schenectady and Albany counties, running thence northwesterly to the city of Schenectady, running thence northwesterly from the city of Schenectady to a point to be determined by the commission, on the dividing line between Montgomery and Schenectady counties, running thence westerly and northwesterly through Montgomery county by the way of Fonda and St. Johnsville, to a point at or near East Creek, on the dividing line between Herkimer and Montgomery counties, running thence westerly and northwesterly by the way of Little Falls and Herkimer, to a point to be determined by the commission, on the dividing line between Herkimer and Oneida counties, running thence westerly to the city of Utica, running thence westerly from the city of Utica to Oneida, on the dividing line between Madison and Oneida counties, running thence westerly by the way of Chittenango, to a point to be determined by the commission on the dividing line between Onondaga and Madison counties, running thence westerly by the way of Fayetteville, to the city of Syracuse, running thence from the city of Syracuse by the way of Camillus and Elbridge, to a point to be determined by the commission, on the dividing line between Cayuga and Onondaga counties, running thence southwesterly to the city of Auburn, running thence from the city of Auburn to a point to be determined by the commission on the dividing line between Seneca and Cayuga counties, running thence westerly to Seneca Falls, thence southerly through the village of Seneca Falls to the south side of Seneca lake outlet, thence westerly on the south side of Seneca lake outlet to a point at the foot of Seneca lake, running thence

westerly to a point to be determined by the commission on the dividing line between Ontario and Seneca counties, running thence westerly to Geneva, running thence westerly from Geneva to Canandaigua, running thence westerly to a point to be determined by the commission, on the dividing line between Livingston and Ontario counties, running thence westerly by the way of Avon and Caledonia, to a point to be determined by the commission, on the dividing line between Genesee and Livingston counties, running thence westerly by the way of Batavia, to a point to be determined by the commission, on the dividing line between Erie and Genesee counties, running thence westerly to the city of Buffalo, Erie county.

Route 7. Commencing at a point to be determined by the commission on the dividing line between the town of Binghamton in Broome county and Pennsylvania, running thence northerly to the city of Binghamton; running thence northerly and northeasterly from the city of Binghamton on the east side of the Chenango river, by the way of Port Crane, Sanitaria Springs and Harpursville, to Nineveh, on the dividing line between Chenango and Broome counties, running thence northeasterly along the Susquehanna valley, to a point at or near Sidney, on the dividing line between Chenango and Delaware counties, running thence northeasterly by the way of Sidney to a point to be determined by the commission, on the dividing line between Otsego and Delaware counties, running thence northeasterly along the Susquehanna valley to Oneonta, running thence northeasterly from Oneonta by the way of Maryland and Worcester, to a point to be determined by the commission, on the dividing line between Schoharie and Otsego counties, running thence easterly by the way of Cobleskill to a point to be determined by the commission, on the dividing line between Albany and Schoharie counties at or near West Berne, running thence easterly to the city of Albany.

Route 8. Commencing at the city of Binghamton, running thence northerly on the west side of the Chenango river to Chenango Forks, on the dividing line between Chenango and Broome counties, running thence along the west bank of the Chenango river to North Norwich, running thence northerly by the way of Sherburne to Earlville, on the dividing line between Madison and Chenango counties, running thence northerly by the way of Hamilton and Bouckville, to a point at or near Oriskany Falls,

on the dividing line between Oneida and Madison counties, running thence northeasterly by the way of Deansboro to a point to be determined by the commission connecting with route number six.

Route 9. Commencing at a point to be determined by the commission, at or near Horseheads, Chemung county, New York, on route number four, running thence northerly and northeasterly by the way of Horseheads, Breesport and Erin to a point to be determined by the commission on the dividing line between Tioga and Chemung counties, running thence easterly and northeasterly by the way of North Spencer to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northerly to the city of Ithaca, running thence northeasterly by the way of a point to be determined by the commission at or near Dryden to a point to be determined by the commission on the dividing line between Cortland and Tompkins counties, running thence northeasterly to Cortland, thence northeasterly by the way of Truxton to a point to be determined by the commission on the dividing line between Madison and Cortland counties at or near De Ruyter, thence northerly to Cazenovia, thence easterly by the way of Morrisville to a point at or near Bouckville on route number eight.

Route 10. Beginning at the city of Syracuse, running thence southerly to a point to be determined by the commission on the dividing line between Cortland and Onondaga counties, running thence southerly by the way of Homer to Cortland, thence southeasterly by the way of McGrawville, Solon and Willet to a point to be determined by the commission on the dividing line between Chenango and Cortland counties, thence southeasterly by the way of Smithville Flats to Greene, thence easterly by the way of Coventry to Coventryville, thence southeasterly to Afton, connecting with route number seven.

Route 11. Commencing at the city of Ithaca, running thence northerly to a point to be determined by the commission, on the dividing line between Cayuga and Tompkins counties, running thence northerly to the city of Auburn.

Route 12. Commencing at a point at or near Horseheads, at a point to be determined by the commission, running thence northerly to a point to be determined by the commission, on the dividing line between Schuyler and Chemung counties, running thence northerly by the way of Watkins, to a point to be determined

by the commission, on the dividing line between Yates and Schuyler counties, running thence northwesterly by the way of Dundee, to the village of Penn Yan, running thence northerly to a point on the dividing line between Ontario and Yates counties, running thence northerly to the city of Geneva, running thence northerly from the city of Geneva, to a point to be determined by the commission, on the dividing line between Wayne and Ontario counties, running thence northerly to Lyons, connecting with route number twenty.

Route 13. Commencing at Bath, Steuben county, running thence northeasterly by the way of Hammondsport to a point to be determined by the commission on the dividing line between Schuyler and Steuben counties, thence northeasterly to a point to be determined by the commission on the dividing line between Yates and Schuyler counties, thence northeasterly to Dundee on route number twelve.

Route 14. Commencing at Corning, Steuben county, running thence northwesterly by the way of Bath, Avoca to Cohocton, running thence northerly from Cohocton, to a point to be determined by the commission on the dividing line between Ontario and Steuben counties, running thence northeasterly to Naples, running thence northerly from Naples to a point to be determined by the commission, connecting with route number six, running thence along route number six, to Holcomb; running thence northwesterly to a point to be determined by the commission on the dividing line between Monroe and Ontario counties, thence northerly to Pittsford, thence westerly, then northerly to the city of Rochester.

Route 15. Commencing at Hornell, Steuben county, running thence northwesterly to a point to be determined by the commission, on the dividing line between Allegany and Steuben counties, running thence northerly to a point to be determined by the commission, on the dividing line between Livingston and Allegany counties, running thence northerly by the way of Dansville and Mount Morris, thence northwesterly and northerly by the way of Moscow and York to a point on route number six at or near Caledonia.

Route 16. Commencing at the village of Cuba, Allegany county, running thence northeasterly by the way of Belfast and Caneadea, to a point to be determined by the commission, on the dividing line between Wyoming and Allegany counties, running thence

northerly by the way of Pike, Gainesville and Rock Glen to Warsaw, running thence northerly to a point to be determined by the commission, on the dividing line between Genesee and Wyoming counties, running thence northerly to the village of Le Roy, running thence along route number six to Caledonia, running thence northerly to a point to be determined by the commission on the dividing line between Monroe and Livingston counties, running thence northerly by the way of Scottsville to the city of Rochester.

Route 17. Commencing at a point to be determined by the commission on route number four at or near Hinsdale, running thence northerly by the way of Franklinville and Machias to a point to be determined by the commission near the dividing lines of Erie, Wyoming and Cattaraugus counties, running thence northwesterly by the way of East Aurora to the city of Buffalo.

Route 18. Commencing at a point to be determined by the commission, on the dividing line between Ripley, Chautauqua county, and the state of Pennsylvania, running thence northeasterly by the way of Westfield, Brocton, Fredonia, along the old Buffalo and Erie road, to a point to be determined by the commission, on the dividing line between Erie and Chautauqua counties, running thence northeasterly and northerly to the city of Buffalo, running thence northerly from the city of Buffalo to the city of Tonawanda, running thence northwesterly and westerly from North Tonawanda to the city of Niagara Falls, running thence northerly from Niagara Falls by the way of Lewiston to a point near the mouth of the Niagara river, Niagara county.

Route 19. Commencing at the city of Buffalo, running thence easterly to Marilla, thence southerly to Wales Center, thence easterly to a point to be determined by the commission on the dividing line between Wyoming and Erie counties, running thence easterly to Varysburg, thence northerly by the way of Attica to a point to be determined by the commission on the dividing line between Genesee and Wyoming counties, running thence northeasterly to Batavia, Genesee county, connecting with route number six.

Route 20. Commencing at a point on route number six, at or near Elbridge, in Onondaga county, running thence northerly to Jordan and westerly to a point to be determined by the commission, on the dividing line between Cayuga and Onondaga counties, running thence northwesterly and southwesterly by the way of Port Byron and Montezuma, to a point to be determined

by the commission, at or near the dividing lines between Wayne, Seneca and Cayuga counties, running thence northwesterly and westerly from Savannah, Clyde, Lyons, Palmyra, and Macedon to a point to be determined by the commission, on the dividing line between Monroe and Wayne counties, running thence northwesterly to the city of Rochester, Monroe county.

Route 21. Commencing at a point on the Hudson river at or near Albany and running thence easterly to a point at or near Sand Lake, running thence southerly to a point at or near Nassau, in Rensselaer county, running thence southeasterly to a point to be determined by the commission, on the dividing line between Columbia and Rensselaer counties, to a point to be determined by the commission, on the dividing line between Columbia county and the state of Massachusetts.

Route 22. Commencing at a point in Rensselaer county at or near the city of Troy, running thence northeasterly by the way of Raymertown, to Potter Hill, running thence northerly through Hoosick Falls, to a point at or near Eagle Bridge, on the dividing line between Washington and Rensselaer counties, running thence northerly by the way of Cambridge, Salem and Granville by the way of Whitehall and the shore road along Lake Champlain to Putnam; and commencing at a point on route twenty-five at Riparius in Warren county, and running thence to a point to be determined by the commission on the dividing line between Essex and Warren counties, and running thence northerly by way of Schroon Lake village to Elizabethtown, running thence westerly to Keene, thence northerly to Ausable Forks and a point on the dividing line between Clinton and Essex counties, thence northeasterly to a point at or near Ausable Chasm, thence northerly by the way of Plattsburgh and Chazy to Rouses Point.

Route 23. Commencing at the village of Ilion, running thence southwesterly to a point at or near the intersection of the three counties, Otsego, Oneida and Herkimer, running thence westerly in Otsego county to a point to be determined by the commission on the dividing line between Oneida and Otsego counties, running thence northerly to the city of Utica, running thence northeasterly through the town of Deerfield to a point to be determined by the commission on the dividing line between Herkimer and Oneida counties, thence easterly to the village of Norway.

Route 24. Commencing at a point on route number six at Fonda, Montgomery county, running thence northerly to a point

to be determined by the commission on the dividing line between Fulton and Montgomery counties, running thence northerly by the way of Johnstown and Gloversville to Northville, running thence northerly to a point to be determined by the commission on the dividing line between the counties of Hamilton and Fulton, running thence northerly to Lake Pleasant.

Route 25. Commencing at Whitesboro near Utica on route number twenty-eight in Oneida county, running thence northerly, by the way of Marcy, Holland Patent, Remsen, Alder Creek and White Lake Corners, to a point to be determined by the commission, at or near the dividing lines between Herkimer, Lewis and Oneida counties, running thence northeasterly by the way of Fulton Chain, and on or near the highways laid out, to a point to be determined by the commission, on the dividing line between Hamilton and Herkimer counties, running thence easterly by the way of Raquette Lake, and on the south shore of Raquette Lake, running thence northeasterly to Blue Mountain Lake, running thence northerly to Long Lake, running thence easterly to a point to be determined by the commission, on the dividing line between Essex and Hamilton counties, running thence easterly to Newcomb, running thence southeasterly by the way of Minerva, to a point to be determined by the commission, on the dividing line between Warren and Essex counties, running thence by the way of North Creek, Riparius and Warrensburg to Lake George, running thence southerly to a point to be determined by the commission on the dividing line between Saratoga and Warren counties at or near Glens Falls, running thence southerly by the way of Saratoga Springs to Ballston Spa, running thence southeasterly to a point to be determined by the commission on the dividing line between Albany and Saratoga counties, running thence southerly to a point to be determined by the commission at or near the city of Albany.

Route 26. Commencing at Little Falls, running thence by the way of Manheim Corners, Dolgeville and Salisbury Center to Fairfield, running thence northwesterly to a point to be determined by the commission, at or near Prospect, on the dividing line between Oneida and Herkimer counties, running thence northwesterly to a point to be determined by the commission, connecting with route number twenty-five.

Route 27. Commencing at a point on route number twenty-five, to be determined by the commission near Alder Creek, running

thence northwesterly by the way of Booneville,* to a point on the dividing line between Lewis and Oneida counties, running thence northerly by the way of Lowville, to a point at or near Carthage, on the dividing line between Jefferson and Lewis counties, running thence northwesterly and westerly to the city of Watertown, running thence northwesterly from the city of Watertown to Clayton, thence northeasterly to Alexandria Bay, Jefferson county.

Route 28. Commencing at the city of Utica, Oneida county, running thence northwesterly to Rome, running thence northwesterly from Rome, by the way of Camden, to a point to be determined by the commission, on the dividing line between Oswego and Oneida counties, running thence northwesterly by the way of Parish to Union Square, Oswego county.

Route 29. Commencing at Rome, running thence southwesterly to Oneida, being a point on the dividing line between Madison and Oneida counties.

Route 30. Commencing at Rouses Point, in Clinton county, running thence westerly through the northern part of Clinton county, to a point to be determined by the commission, on the dividing line between Franklin and Clinton counties, running thence westerly by the way of Burke, Malone and Moira, to a point to be determined by the commission, on the dividing line between Saint Lawrence and Franklin counties, running thence westerly to North Lawrence, running thence southerly to a point at or near Nicholville, running thence westerly and southwesterly by the way of Potsdam, Canton and Gouverneur, to a point to be determined by the commission, on the dividing line between Jefferson and Saint Lawrence counties, running thence southwesterly by the way of Philadelphia to Watertown, running thence southerly from Watertown, by the way of Adams and Pierrepont Manor, to a point to be determined by the commission, on the dividing line between Oswego and Jefferson counties, running thence southerly and southwesterly and westerly by the way of Pulaski and Union Square to Oswego, running thence westerly from Oswego to a point to be determined by the commission, on the dividing line between Cayuga and Oswego counties, running thence southwesterly through the northern part of Cayuga county to a point to be determined by the commission, on the dividing line between Wayne and Cayuga counties, running thence southwesterly and westerly by way of Red Creek, Walcott,* Alton, Sodus, Williamson and Ontario to a point to be determined by the commis-

* So in original.

sion on the dividing line between Monroe and Wayne counties, running thence southwesterly to the city of Rochester, running thence westerly from the city of Rochester by the way of Spencerport, to a point to be determined by the commission, on the dividing line between Orleans and Monroe counties, running thence westerly to points at or near Albion and Medina, to a point to be determined by the commission, on the dividing line between Niagara and Orleans counties, running thence westerly to a point to be determined by the commission, connecting with route number eighteen.

Route 31. Commencing at Malone, Franklin county, running thence southerly by the way of a point at or near Duane and Meacham Lake to Saranac Junction.

Route 32. Commencing at North Lawrence in St. Lawrence county, running thence westerly to Winthrop, running thence northerly to Massena, running thence southwesterly by the way of Waddington to Ogdensburg.

Route 33. Commencing at Syracuse, running thence northerly to a point to be determined by the commission, on the dividing line between Oswego and Onondaga counties, running thence northerly by the way of Central Square to a point at or near Colosse on route number twenty-eight.

Route 34. Commencing at the city of Oswego on the east side of the river, running thence by the way of Fulton through Phoenix to a point to be determined by the commission on the dividing line between Onondaga and Oswego counties, running thence by the way of Liverpool to Syracuse.

Route 35. Commencing at a point to be determined by the commission on the dividing line between Nassau and Queens counties, running thence easterly through the northern portion of Nassau county to a point to be determined by the commission on the dividing line between Suffolk and Nassau counties, running thence easterly by the way of Jericho turnpike to Smithtown branch, Saint James, Port Jefferson and Wading River to Riverhead, running thence southerly to West Hampton, running thence westerly by the way of south country road to Patchogue, Sayville, Islip, Bay Shore and Babylon to Amityville, running thence westerly to a point to be determined by the commission on the dividing line between Nassau and Suffolk counties, running thence westerly through the southern portion of Nassau county to a point to be determined by the commission on the dividing line between Queens and Nassau counties.

Route 36. Commencing at Owego in Tioga county, running thence northerly to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northwesterly to the city of Ithaca, running thence northwesterly from the city of Ithaca to Trumansburg, at or near the dividing line between Seneca and Tompkins counties, running thence northwesterly and northerly by the way of Ovid to a point to be determined by the commission on route number six.

Route 37. Commencing at Johnstown in Fulton county, running thence northeasterly by the way of Broadalbin to a point to be determined by the commission on the dividing line between Saratoga and Fulton counties, running thence easterly by the way of Galway to Saratoga Springs connecting with route number twenty-five.

§ 121. **Construction or improvement of state highways.**— The state highways shall be constructed or improved by the commission as provided in this article. The mileage to be constructed from the amount available from the sale of bonds issued as provided by chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, and appropriated for the construction or improvement of state highways, shall be equitably apportioned by the commission among the several counties without discrimination; but not more than one-half of the amount appropriated each year from the proceeds of the sale of such bonds shall be expended under this article for the construction and improvement of state highways. In making the apportionment between counties the commission shall take into consideration the mileage which may be constructed from the amount to be expended under this article in each county for the construction or improvement of county highways, together with the mileage of state and county highways theretofore constructed out of moneys derived from the sale of bonds issued as above provided.

§ 122. **Construction or improvement of county highways.**— The county highways to be constructed or improved under this article at the joint expense of the state, county and town, shall be those highways in each county determined by the commission to be of sufficient public importance to come within the purposes of this chapter, so as to constitute a part of a properly developed system of improved market roads within the county, taking into account

the use, location and value of such highways for the purposes of common traffic and travel. Such county highways shall be equitably apportioned by the commission among the several counties without discrimination. In making such apportionment the commission shall take into consideration the total mileage of state highways which shall be hereafter constructed or improved in each county, and also the highways therein which have been constructed or improved prior to the taking effect of this article from funds made available by the issue and sale of bonds as provided in section twelve of article seven of the constitution, so that there shall be an equitable distribution as between the counties of all highways built in whole or in part from such funds.

§ 123. **Preliminary resolution of board of supervisors.**—The board of supervisors of any county may pass a resolution stating that public interest demands the improvement of a highway or section thereof within the county, and requesting that it be constructed or improved as provided in this article. Such resolution shall contain a description of such highway or section thereof. Such highway or section thereof shall not include a portion of a highway within a city, nor any portion of a highway within an incorporated village, unless it be necessary to complete the connection of such highway with a highway already improved or to be improved under this article. The clerk of the board of supervisors shall, within ten days after the passage of such a resolution, transmit a certified copy thereof to the commission.

§ 124. **Examination of county highway; approval or disapproval by commission.**—The commission after receipt of such resolution, and at such times as it deems proper, shall examine the highway or section thereof sought to be constructed or improved, and shall determine whether it is of the character specified in section one hundred and twenty-two, and whether the construction or improvement thereof will provide for an equitable apportionment of the highways among the several counties as provided in such section. After such examination the commission shall certify its approval or disapproval of such resolution to the board of supervisors adopting it; if it disapprove thereof it shall certify its reasons therefor.

§ 125. **Maps, plans, specifications and estimates.**—Whenever the commission shall have determined upon the construction or improvement of a state highway, or section thereof, or shall have approved a resolution adopted by a board of supervisors in any

county requesting the construction or improvement of a county highway, or a section thereof, the commission shall direct the division engineer of the division wherein such highway or section thereof is situated to make surveys, and prepare suitable preliminary maps, plans and specifications. Such division engineer shall, subject to the direction and control of the commission, have the following powers and duties in respect to such highways:

1. He shall cause the highway or section thereof designated by the commission, or described in such resolution, to be mapped both in outline and profile.

2. He may provide for a deviation from the line of a highway already existing, if thereby a shorter or more direct highway, or a lessened gradient may be obtained without decreasing the usefulness of the highway.

3. He may provide for the widening of an existing highway.

4. He shall prepare preliminary plans and specifications for the construction or improvement of such highway or section thereof providing for a telford, macadam or gravel roadway, or other suitable construction, taking into consideration climate, soil and materials to be had in the vicinity thereof, and the extent and nature of the traffic likely to be upon such highway, specifying in his judgment the kind of highway a wise economy demands.

5. He shall provide in such plans and specifications for necessary culverts, drains, ditches, waterways, embankments, guard-rails and retaining walls.

6. He may provide therein for the removal or planting of trees, within the boundaries of the highway, when necessary for the preservation thereof.

7. He shall provide therein for the erection of suitable guide boards.

8. He may provide for such other work as may be required to complete the construction or improvement in a proper manner.

9. He shall cause an estimate to be made of the cost of the construction of such highway or section thereof in accordance with such plans and specifications. In making such estimate he shall ascertain with all practical accuracy the quantity of embankment, excavation and masonry, the quantity of all materials to be used and all items of work to be placed under contract and specify the estimated cost thereof.

§ 126. **Submission of maps, plans and specifications to district or county superintendent.**—The commission shall cause the prelim-

inary maps, plans and specifications for either a state or county highway, or a copy thereof, to be presented to the district or county superintendent of the district or county in which such highway or section thereof is situated, who shall personally examine the highway or section thereof and the proposed maps, plans and specifications, and shall recommend any modification thereof which in his judgment seems to be necessary and shall report thereon within sixty days to the commission. He shall also take such other action in respect thereto as may be required by law or by the commission.

§ 127. **Action of commission in respect to maps, plans, specifications and estimates.**— Upon receiving the report of the district or county superintendent, as provided in the preceding section, the commission shall finally adopt the maps, plans, specifications and estimates which are to be used for the construction or improvement of the state or county highway to be constructed or improved. If such highway be a state highway the commission shall thereupon proceed to advertise and award contracts for the construction or improvement thereof as provided in section one hundred and thirty. If such highway be a county highway the commission shall transmit such plans, specifications and estimates as adopted by them to the board of supervisors of the county from which the resolution proceeded, together with their certificate approving the construction or improvement of the highway or section thereof designated in such resolution.

§ 128. **Final resolution of board of supervisors.**— The board of supervisors, after the receipt of plans, specifications and estimate of a county highway or section thereof, and after such modification thereof as may be made by a majority vote of such board, with the consent of the commission, may approve such plans, specifications and estimate, and adopt a resolution requesting that such county highway or section thereof be constructed or improved under the provisions of this article, in accordance therewith. In the case of a county highway or a section thereof which divides two or more counties, such resolution must be separately adopted by the board of supervisors of each county within which a portion of such highway lies. The form of such resolution shall be prescribed by the commission and shall contain the matter required by this article to be inserted therein. Immediately upon the adoption of such resolution the clerk of the board of supervisors shall transmit a certified copy thereof to the

commission. When a board of supervisors has once adopted a resolution providing for the construction or improvement of a highway or a section thereof in accordance with such plans and specifications, no resolution thereafter adopted by such board shall rescind or annul such prior resolution either directly or indirectly, excepting under the advice and with the consent of the commission. Notwithstanding the adoption of such a resolution, the commission may modify such plans, specifications and estimate, prior to the award of a contract therefor and, upon the approval thereof by the board of supervisors as above provided, such highway or section thereof shall be constructed or improved in accordance with such plans, specifications and estimate.

§ 129. **Order of construction of county highways.**— Upon the receipt of such resolution the commission shall proceed with the improvement or construction of such county highway as provided in this article. The construction and improvement of such county highways and sections thereof shall be taken up and carried forward within a county in the consecutive order as determined by the date of the receipt by the commission in each case of the certified copy of the final resolution, so far as is practicable in the opinion of the commission. No such highway shall be placed upon the list of highways to be constructed or improved nor receive a consecutive number on such list, unless such resolution shall appropriate and make immediately available for such construction or improvement the counties' and towns' share of the cost thereof, or shall request that the whole cost of such construction or improvement shall be paid in the first instance by the state and that the county and town or towns shall be charged annually by the comptroller with the amount properly chargeable thereto, under the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, and the acts amendatory thereof.

§ 130. **Contracts for construction or improvement of highways.**— State and county highways shall be constructed or improved by contract. Upon the completion and final adoption or approval, as provided by law, of the plans, specifications and estimate for the construction or improvement of a state or county highway, contracts therefor shall be executed as provided herein.

1. *Advertising for proposals.*— The commission shall advertise for proposals for the construction or improvement of such highways or sections thereof according to the plans, specifications and

estimate prepared therefor. The advertisement shall be limited to a brief description of the work proposed to be done, with an announcement stating where the maps, plans, specifications and estimate may be seen, the terms and conditions under which proposals will be received, the time and place where the same will be opened, and such other matters as the commission may deem advisable to include therein. Such advertisement shall be published at least once in each week for two successive weeks in a newspaper published at the county seat of the county in which such highway or section thereof is to be constructed or improved, and in such other newspapers as the commission may designate.

2. *Proposals.*— Each proposal shall specify the gross sum for which the work will be performed and shall also include the amount to be charged for each item specified in the estimate. The commission may prescribe and furnish forms for the submission of such proposals and may prescribe the manner of submitting the same which shall not be inconsistent herewith. The proposals when opened shall be subject at all reasonable times to public inspection, and at the time of opening shall be publicly read, and conspicuously posted in such a manner as to indicate the several items of the proposal.

3. *Award of contracts.*— The contract for the construction or improvement of such highway or section thereof shall be awarded to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate made for the construction or improvement of such highway or section thereof in accordance with such plans and specifications. The lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work will be performed, including all the items specified in the estimate therefor.

4. *Estimates may be amended.*— If no proposal otherwise acceptable is made within the estimate accompanying the plans and specifications, the commission may cause the estimate to be amended. If the highway to be constructed or improved is a county highway the commission shall certify the amended estimate to the board of supervisors and the board shall take action thereon as in a case where plans, specifications and estimates are originally submitted to a board of supervisors. Upon the amendment of such estimate, and its approval by the board of supervisors in case of a county highway, the commission may proceed anew to obtain proposals and award the contract as provided in this section.

5. *Rejection of proposals.*— The commission may reject any or all proposals and may advertise for new proposals as above provided, if, in their opinion, the best interests of the state will thereby be promoted.

6. *Form of contract.*— The commission shall prescribe the form of contract and may include therein such matters as they may deem advantageous to the state. Such forms shall be uniform so far as may be.

7. *Bond of contractor.*— Each contractor, before entering into a contract for such construction or improvement, shall execute a bond in the form prescribed by the commission, with sufficient sureties, to be approved by the commission, conditioned that he will perform the work in accordance with the terms of the contract, and with the plans and specifications, and that he will commence and complete the work within the time prescribed in the contract. Such bond shall also provide against any direct or indirect damages that shall be suffered or claimed on account of such construction or improvement during the time thereof, and until the highway is accepted.

8. *Payments on contract.*— The contract may provide for partial payments to an amount not exceeding ninety per centum of the value of the work done, which shall be paid in the manner provided by this article when certified to by the commission. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted.

9. *Contingencies.*— All contingencies arising during the prosecution of the work shall be provided for to the satisfaction of the commission and as may be agreed upon in the original or by a supplemental contract executed by the commission; the amount to be expended shall not exceed the original estimate, unless such estimate shall have been duly amended by the commission and, in the case of a county highway, submitted to the board of supervisors for its approval. If a supplemental contract be executed by the commission for the performance of work or furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or material shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Such supplemental contract shall not be binding unless it be approved by the commission in case of a state highway and in case of a county

highway, by the chairman of the board of supervisors and the district or county superintendent.

§ 131. **Award of contracts to board of supervisors or town board.**—A board of supervisors of a county, or a town board of a town, in which any portion of a county highway is situated, may present proposals and be awarded a contract for the construction or improvement of such highway, as provided in this article, for and on behalf of such county or town. If such contract be awarded to a board of supervisors or a town board such board shall, by resolution, designate some suitable person or persons to carry into effect, on behalf of the town, such contract, and transact all business in respect thereto as may be necessary. A member of the board of supervisors or town board at the time such contract was awarded or such designation was made, or a person who is a partner of, or a stockholder in the same corporation as that of such member, shall not be so designated. A member of the board of supervisors or town board at the time such designation was made, or a firm, corporation or association of which he is a member or has an interest, shall not be directly or indirectly interested in any such contract nor shall such member, or such firm, corporation or association furnish materials or perform labor or services, either directly or indirectly, under or in connection with the performance of any of the work required in accordance with such contract, nor shall such member, firm or corporation or association, be paid for materials furnished or services rendered in respect to such contract. The clerk of the board of supervisors or the town clerk shall transmit a certified copy of the resolution designating the person or persons to carry into effect such contract to the commission prior to the awarding of a contract to the board of supervisors or town board. The person or persons so designated shall, before the contract is executed, give an undertaking to the county or town, with sureties to be approved by the commission and the board of supervisors or town board, for an amount equal to the amount of the bid presented by the county or town. Such undertaking shall be conditioned on the faithful performance of their duties in respect to such contract and for the proper accounting, safe-keeping and lawful disbursement of all moneys that may come into their hands thereunder. Such undertaking shall be filed in the office of the county or town clerk and a copy thereof shall be transmitted to the commission. The person or persons so designated shall

thereupon be competent to receive all moneys payable under such contract under the provisions of this article, and they shall account therefor to the county or town. The board of supervisors or town board, after such contract is awarded, shall designate, by resolution, a banking corporation or a trust company wherein the moneys received under such contract shall be deposited. Such bank or trust company shall, upon the request of the board of supervisors or town board, make a statement of the money so deposited. The commission shall, by rules and regulations, prescribe the manner in which the moneys received under such contract shall be expended and the forms of accounts to be kept by the person or persons designated as above provided. Reports may be required by the commission from time to time from such person or persons.

§ 132. Suspension of work under contract; completion by commission.— If the division engineer shall determine that the work upon any contract for the construction or improvement of a state or county highway is not being performed according to the contract or for the best interests of the state, he shall so certify to the commission and the commission may suspend or stop the work under the contract while it is in progress, and shall thereupon complete the work in such manner as will accord with the contract specifications, and be for the best interests of the state, or it may cancel the contract and readvertise and relet as provided in section one hundred and thirty, and any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to any* paid by the contractor failing to perform the work. Every contract for the construction or improvement of a state or county highway shall reserve to the commission the right to suspend or cancel the contract as above provided, and to complete the work thereunder or readvertise and relet as the commission may determine.

§ 133. Acceptance of state highway when completed.— Upon the completion of a state highway or section thereof constructed or improved under a contract let as provided in this article, the division engineer together with the county or district superintendent shall inspect the same and if it be completed as provided in the contract, they shall thereupon report to the commission, who shall, if it approve, notify the contractor of that fact and the highway or section thereof so constructed or improved shall be deemed to have been accepted by the state.

* So in original.

§ 134. **Acceptance of county highway.**— Upon the completion of a county highway or section thereof, constructed or improved under a contract let as provided in this article, the commission shall inform the district or county superintendent and the board of supervisors of the county in which such highway or section thereof is located in writing, that it will accept the work on behalf of the state and county within twenty days from the date of such notice, unless protest shall be filed with him* in writing by the district or county superintendent or by the chairman of the board of supervisors. In case a protest is filed the commission shall hear the same and if it is sustained it shall delay the acceptance of the highway or section thereof until it be properly completed. Upon the proper completion of such highway or section thereof and after filing the notice above given it shall be deemed to have been accepted by the board of supervisors of such county and thereafter it shall be maintained as provided in this chapter.

§ 135. **Entry upon adjacent lands for drainage purposes.**— Lands adjacent to a state or county highway may be entered upon and occupied for the purpose of opening or constructing a drain or ditch so as to properly drain such highway:

1. By a contractor, or any of his agents or employees, when directed by the commission, during the construction or improvement of such highway.

2. By the commission or its duly authorized officers, agents or employees, at any time, for the purpose of making surveys for such drain or ditch.

3. By the commission, or its duly authorized officers, agents or employees, or by a county, district or town superintendent, when directed by the commission, after the completion and acceptance of the highway for the purpose of opening, constructing or maintaining ditches or drains upon such lands, necessary for the proper maintenance of such highway.

§ 136. **Damages for entry.**— The commission may agree with the owner of lands entered upon and occupied as provided in the preceding section for the payment of damages caused by such entry, or if unable to so agree the right to enter and occupy such lands may be acquired and the damages therefor shall be ascertained as provided in the condemnation law. Such damages shall, in the case of a state highway, be paid out of moneys available for the construction or improvement of such highway, and in the case of a county highway shall be a county charge and paid in the same manner as other county charges.

* So in original.

§ 137. **State and county highways in villages.**— A state and county highway may be constructed through a village in the same manner as outside thereof, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. If it is desired to construct or improve any portion of a state or county highway within such village at a width greater than that provided for in the plans and specifications therefor, or if a modification of the plans and specifications is desired by which the cost thereof is increased, the board of trustees of such village shall petition the commission by resolution, to so modify such plans and specifications as to provide for such construction. The commission shall thereupon cause the plans, specifications and estimate for such highway to be modified so as to provide for such additional construction, and shall provide therefor in the contract. Upon the completion of such state or county highway within the village in accordance with such modified plans and specifications the commission shall notify the board of trustees as provided in the case of a county highway. Such board may file a written protest against the acceptance of such work with the commission who shall examine in respect thereto, and if it is sustained the commission shall delay the acceptance of the highway within the village until it be properly completed. Upon the proper completion thereof and the notification as above provided, the commission shall certify to the board of trustees the cost of such additional construction, and such board shall pay the same out of moneys raised by tax or from the issue and sale of bonds as provided in the village law. The provisions of the general village law, special village charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, so far as may be, to such additional construction and the assessment and payment of the cost thereof.

§ 138. **Connecting highways in villages.**— The board of trustees of a village may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village, which have been paved or improved, with county highways which have been heretofore built under the

provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated, with a written statement of their reason for providing for such construction or improvement. A copy of such statement shall be filed in the office of the county clerk of such county. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution as in other cases, and such payment shall be made in the same manner. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

§ 139. **Resolution to provide for raising money.**— The resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof shall either

1. Appropriate and make immediately available to the requisition of the commission an amount sufficient to pay the share of the cost of such construction or improvement which is to be borne by the county and town or towns within which such highway or section thereof is located; or

2. Request that the entire cost of the construction or improvement of such county highway or section thereof shall be paid in the first instance by the state and that the county and town or towns shall be charged annually with their share of the interest and sinking fund as provided in chapter four hundred and sixty-nine

of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven.

§ 140. **Modifying method of payment.**— If a resolution has been heretofore adopted, or shall hereafter be adopted, by a board of supervisors, appropriating and making immediately available an amount sufficient to pay the share of the cost of the construction or improvement of a county highway to be borne by the county and the town or towns in which the highway is located, such board of supervisors may adopt a resolution requesting the state to pay the entire cost of the construction or improvement of such highway in the first instance and that the state charge the county and town or towns annually with their share of the interest and sinking fund, as provided in chapter four hundred and sixty-nine of the laws of nineteen hundred and six, and the acts amendatory thereof. The clerk of the board of supervisors shall transmit certified copies of such resolution to the commission and the state comptroller. If such resolution shall have been received by the commission and the state comptroller, prior to the advertisement for bids for the construction or improvement of such county highway or section thereof, the entire cost of such construction or improvement shall be paid in the first instance by the state and the share of the interest and sinking fund shall be charged annually against the county and town or towns in which such highway is located in the same manner and with the same effect as though the resolution had originally requested such payment and charge. The adoption of a resolution modifying the method of payment of the share of the county and town or towns shall not affect or change the date of the filing of the original resolution providing for the construction or improvement of such highway nor alter in any way the order of construction determined by the date of the filing of the original resolution.

§ 141. **Division of cost of county highways; payments by county treasurer.**—Whenever the construction or improvement of a county highway or section thereof under a contract shall be completed and final payment therefor shall have been made the commission shall prepare a statement of the cost of such construction or improvement, including engineering expenses, inspection and all charges and expenses properly chargeable thereto, showing in detail the date of each payment, and the purpose and amount of such payment. Such payments shall be grouped as far as practicable

by dates and the total thus obtained shall be deemed the cost of such construction or improvement, and a certified copy of said statement shall be filed by the commission in the office of the comptroller. If a county highway or section thereof so constructed or improved shall be situate in two or more towns or in two or more counties, the commission shall apportion such expense to such towns and counties according to the cost of such construction or improvement in each of such towns or counties. Such statement when audited and approved by the comptroller shall be filed in his office and shall be final, and a duplicate thereof shall be filed with the county treasurer of each county wherein the highway or section thereof has been improved. If the board of supervisors of any county shall have theretofore provided funds to pay two per centum of the cost of such county highway as thus determined, for each one thousand dollars of assessed valuation of real and personal property liable to taxation in said county for each mile of public highway within such county to be ascertained and determined by dividing the total assessed valuation of taxable property in said county as equalized for state purposes by the total mileage of highways in said county, exclusive of the streets and highways within any incorporated city or village in said county, and if the board of supervisors of any county shall have theretofore provided funds to pay, on behalf of any town, one per centum of the cost of such improved highway as thus determined, for each one thousand dollars of assessed valuation of real or personal property liable to taxation in said town for each mile of public highway within said town to be ascertained and determined by adding to or deducting from the total assessed value of taxable property in said town as equalized for county purposes, the percentage of value, if any, added or deducted by the state board of equalization to equalize between counties for state purposes, and dividing the sum thus obtained by the total mileage of public highways in said town, exclusive of the streets and highways within any incorporated city or village in said town, but not exceeding thirty-five per centum of the cost for the county and fifteen per centum of the cost for the town or towns, as shown by such statement, it shall be the duty of the county treasurer to pay the amount thereof upon the requisition of the commission and thereafter the county and town shall be deemed to be fully discharged of its obligation to the state on account of the construction or improvement of such county highway, except the

obligation to pay their proportionate amount of the state tax for the state's share of the cost of construction. At least ten days notice shall be given by the commission to the county treasurer prior to the making of such a requisition. A copy of each contract providing for the construction or improvement of a county highway, and the plans and specifications therefor, together with copies of certificates showing the progress of the work, upon which requisitions are drawn, shall be filed with the county treasurer. The mileage of highways to be used in determining the amounts to be charged to a county or town under this section shall be the tables of mileage formerly prepared by the state engineer until the tables as provided in this chapter are filed.

§ 142. County or town may borrow money.— If there are not sufficient funds in the county treasury to pay the share of the cost of the construction or improvement of a county highway which is to be borne by the county and town or towns, as appropriated and made immediately available by the resolution providing for such construction or improvement, the county treasurer is authorized and directed to borrow a sufficient sum to pay such share in anticipation of taxes to be collected therefor and to pledge the faith and credit of the county for the payment of the amount when due with interest. Hereafter it shall be the duty of the board of supervisors to provide for the assessment, levy and collection of said apportioned amounts respectively as county and town charges, and to direct the payment of the aggregate amount by the county treasurer in the manner and at the times prescribed by law for the payment of state taxes to the state treasurer.

Upon the petition of the town board of any town, the board of supervisors of the county may, by resolution, authorize the town to borrow a sufficient sum to pay the share of the cost of the construction or improvement of a county highway which is to be borne by the town and to issue and sell town bonds therefore.* Such bonds shall be sold by the supervisor for not less than par and the proceeds thereof shall be paid into the county treasury to be applied in payment of the share of such cost which is to be borne by such town. The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such bonds as they shall become due.

§ 143. Payments from state treasury.— If the resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof request the payment

* So in original.

by the state in the first instance of the entire cost of such construction or improvement, the clerk of the board of supervisors shall file certified copies of such resolution with the commission and the state comptroller. The entire cost of such construction or improvement shall thereupon be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission. The comptroller shall annually charge the county and town or towns in which such county highway is located with their share of the interest and sinking fund, as provided in chapter four hundred and sixty-nine of the laws of nineteen hundred and six and the acts amendatory thereof. It shall be the duty of the commission from time to time, whenever requested by the comptroller, to certify to the comptroller the apportionment of the cost of construction or improvement of any such highway or section thereof, between the state, county and town.

§ 144. **Payment of cost of state highway.**— The entire expense of the construction or improvement of a state highway shall be paid by the state treasurer upon the warrant of the comptroller issued upon the requisition of the commission out of any specific appropriation made available for the construction or improvement of state highways.

§ 145. **Abolition of railroad grade crossings.**— The commission shall provide for and cause the abolition of railroad grade crossings on a state or county highway whenever practicable, in the manner provided by the railroad law. The portion of the cost of abolishing such grade crossings, which is payable under the railroad law by the state and town or village, shall be paid out of the funds available for the construction or improvement of such state or county highway as provided in this article.

§ 146. **Street surface railroads on highways.**— No street surface railroad shall be constructed upon any portion of a state or county highway which has been or may be improved under the provisions of this article, nor shall any person, firm or corporation enter upon or construct any works in or upon any such highway, except upon the approval of, and under such conditions and regulations as may be prescribed by the commission, notwithstanding any consent or franchise granted by the town superintendent or municipal authorities of any town. Any person, firm or corporation violating this section shall be liable to a fine of one thousand dollars for each day of such violation, to be recovered

by the commission and paid to the state treasurer to the credit of the fund for the maintenance and repair of state and county highways, and may also be removed therefrom as a trespasser by the commission upon petition to the county court of the county or the supreme court of the state.

§ 147. **Where cost is assessable against abutting owners.**— If fifteen per centum of the cost of constructing or improving a highway has been or may be assessed upon abutting owners, as authorized by section ten of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, as the same existed prior to its repeal by chapter four hundred and sixty-eight of the laws of nineteen hundred and six, such highway shall be constructed or improved at the joint expense of the state, county and town as provided herein, and the portion of the cost so assessable upon such owners, shall be paid by the town in which such highway is located, as provided in this article.

§ 148. **Acquisition of lands for right of way and other purposes.**— If a state or county highway, proposed to be constructed or improved as provided in this article, shall deviate from the line of a highway already existing, the board of supervisors of the county where such highway is located, shall acquire land for the requisite right of way prior to the actual commencement of the work of construction. The board of supervisors may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, improvement or maintenance of highways, or for spoil banks together with a right of way to such spoil banks and to any bed, pit, quarry, or other place where such gravel, stone or other material may be located.

§ 149. **Purchase of lands.**— The board of supervisors may, by resolution, authorize its chairman, a member, or a committee to purchase the lands to be acquired for the purposes specified in the preceding section. But the amount to be paid under this section to a single owner shall not exceed the sum of two hundred dollars, unless approved by the county judge and county treasurer, and in no case shall such amount exceed the sum of one thousand dollars. The purchase price of such lands shall be a county charge, and shall be paid in the same manner as awards are paid in cases where the proceedings are taken as herein required.

§ 150. **Petition to acquire lands.**— If the board of supervisors is unable to acquire lands by purchase as provided for in the last

section, the board may present to the county court of the county or to the supreme court, at a special term thereof, to be held in the judicial department in which said county is located, a petition for the appointment of three commissioners of appraisal to ascertain and determine the compensation to be paid to the owners of the land to be acquired and to all persons interested therein. Such petition shall describe the land to be acquired with a reference to the map upon which the same is shown which shall be annexed to such petition. A copy of such map shall be filed in the office of the county clerk. Such petition shall be signed and verified in the name of the board of supervisors, by the chairman or a member thereof designated for that purpose by resolution. Notice of presentation of such petition to such court shall be given by the petitioner by publishing such notice in two newspapers published in such county, once in each week for two weeks successively preceding the day of such presentation, and also by posting a copy of said notice in not less than three public places in each town in which property to be acquired is located, at least eight days preceding the day of such presentation.

§ 151. **Commissioners to be appointed.**— Upon such presentation, such court shall, after hearing any person owning or claiming an interest in the lands to be acquired who may appear, appoint three disinterested persons as commissioners. And in case a commissioner shall at any time decline to serve, or shall die, or for any cause become disqualified or disabled from serving as such, the said court, at a similar special term, may, upon similar notice, application and hearing, and upon such notice to the land owners as the court may prescribe, appoint another person, similarly qualified, to fill the vacancy caused thereby.

DERIVATION. This section is taken from L. 1901, chap. 240, § 4.

§ 152. **Duties of commissioners.**— The said commissioners shall take the oath of office prescribed by the constitution, which oath shall be filed in the office of the county clerk of the county. The commissioners shall, with all reasonable diligence, proceed to examine such highways and lands to be acquired and may enter upon such lands for such purpose. Said commissioners shall cause a notice to be published in two such newspapers as aforesaid, once each week for two weeks successively next preceding the day of meeting mentioned in such notice, that at a stated time and place within such county they will meet for the purpose of hearing the parties claiming an interest in the damages to be awarded for the lands to be taken for such highways. Said

notice shall also state the fact that a map or maps showing the land to be acquired has been filed in the county clerk's office. At the time and place of said meeting and at any adjournment thereof which said commissioners shall publicly make, they shall hear the proofs and allegations of all interested parties. They may adjourn the proceedings before them from time to time, issue subpoenas or administer oaths in such proceedings; and shall keep minutes of their proceedings and reduce to writing all oral evidence given before them. They shall thereafter make and sign a report in writing, in which they shall assess, allow and state the amount of damages to be sustained by the owners of the several lots, pieces or parcels of land to be taken for the purposes aforesaid. Such report shall contain the names of the owners of any parcel of land to be acquired as aforesaid, except that in case the commissioners are unable to ascertain the names of such owners, they may in place of the names of such undiscovered parties insert the words "unknown owners," in their report. The said commissioners shall file their said report, together with the minutes of their proceedings, in the office of county clerk of such county. After said report shall have been completed and filed as aforesaid, the commissioners shall, after publishing a notice in like manner as that provided in section one hundred and fifty-two, apply to the county court of the county or to the supreme court, at a special term thereof to be held in the judicial department in which said county is located, to have the said report confirmed. If no sufficient reason to the contrary shall appear, the court shall confirm said report. Otherwise it may refer the same back to the said commissioners for revision or correction; and after such revision or correction the same proceedings shall be taken as are hereinbefore provided for, and the commissioners shall in the same manner make renewed application for the confirmation of such report, and the court shall thereupon confirm or refer back the said report, and such proceedings shall be repeated until a report shall be presented which shall be confirmed by the said court.

§ 153. County treasurer to pay awards.—Within six months after the report of said commissioners shall be confirmed as aforesaid, the county treasurer of such county shall pay to the persons named therein the amounts awarded to them for damages with six per centum interest thereon from the day of the confirmation of said report. Such amounts with interest and the amounts paid in

pursuance of this article shall be a county charge and shall be paid by the county treasurer, in case of purchase upon requisition of the chairman of the board of supervisors of said county, or by any member or committee thereof designated for that purpose by said board and in case of a petition for the acquisition of such lands, upon service of a certified copy of the order confirming such awards. In case there are unknown owners, to whom the award is made in said report, the said county treasurer shall deposit the amounts awarded to them with like interest in some trust company or bank in such manner as the said court shall in the order of confirmation direct, such amount to be paid out upon the application of said unknown owners when discovered. From the date of the confirmation of such report by the order of the said court the title of all lands therein designated shall vest in said county for the purposes of a highway forever.

§ 154. **Costs; commissioners' fees.**—In all cases of assessment of damages by commissioners appointed by the court, the costs thereof shall be a county charge in the first instance, and be paid by the county treasurer as hereinbefore provided, except when reassessment of damages shall be had on the application of the party for whom damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment, and when application shall be made by two or more persons for reassessment of damages all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action. Each commissioner appointed by the court as provided in this article for each full day necessarily employed as such, shall be entitled to the sum of six dollars and his necessary expenses. The amount of compensation to which such commissioners are entitled shall be determined by the court in which the proceeding is pending, upon verified accounts presented by such commissioners, stating in detail the number of hours necessarily employed in the discharge of their duties, and the nature of the services rendered. The audit and determination of the courts as to the amount justly due shall be final.

§ 155. **Land may be sold or leased; disposition of proceeds.**—Any lands acquired by purchase or condemnation, for the purpose of obtaining gravel, stone or other materials, for the construction or maintenance of highways improved or constructed as provided in

this article, or required for spoil banks, may be sold or leased by the board of supervisors of any county, when no longer needed for any such purpose. The proceeds thereof shall be paid into the county treasury and shall be retained therein as a separate fund available for the construction or maintenance of highways improved or constructed under this article.

§ 156. **Application of provisions of labor law.**—The provisions of section three of the labor law, as amended by chapter five hundred and six of the laws of nineteen hundred and six, which except from the provisions of that section labor performed in the construction, maintenance and repair of highways outside the limits of cities and villages, shall apply to the construction, improvement and maintenance of state and county highways as provided in this chapter.

§ 157. **Highways and bridges on Indian reservations.**—When any portion of a county highway designated for improvement or construction in a county, as provided in this article, is located on an Indian reservation, the entire cost of the improvement or construction of such portion shall be paid by the state in the same manner as the state's share of the cost of such county highway, out of any specific appropriation made available for the construction or improvement of county highways. The commission shall have exclusive supervision and control of all bridges constructed or to be constructed by the state on any Indian reservation, and may make and enforce such reasonable rules and regulations concerning their use, as it shall deem necessary.

Maintenance of State and County Highways.

Section 170. Commission to provide for maintenance and repair.

171. Appropriations by state; apportionment of moneys.

172. Cost to town for maintenance of state and county highways.

173. Disbursement of maintenance funds.

174. Reports of county treasurer.

175. Compensation of town superintendents.

176. Liability of state for damages.

177. Maintenance of state and county highways in villages.

178. State to share expense of maintaining certain country roads.

179. Sprinkling; removal of filth and refuse.

§ 170. **Commission to provide for maintenance and repair.**—The maintenance and repair of state and county highways, exclusive however of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and

control of the commission and they shall be responsible therefor. The commission shall have the power

1. To adopt proper rules and regulations therefor and the work shall be performed by the town or the district or county superintendents as therein provided and in case the commission is unable to thus secure the proper performance of said work they shall have the power to contract for any necessary repair and likewise to provide for the due supervision of said work.

2. To purchase materials for such maintenance and repair, and contract for the delivery thereof at convenient intervals along such highways.

3. To provide for a system of patrol of such highways, or adopt such other system as may seem expedient so that each section of such highways shall be under constant observation, and be effectively and economically preserved, maintained and repaired.

§ 171. **Appropriations by state; apportionment of moneys.**— There shall be annually appropriated for the maintenance and repair of state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-one of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties and the several towns therein in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to all the towns in such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of state and county highways in the several towns of the county. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of a state or county highway which shall at any time be damaged or destroyed by the elements or otherwise, which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes.

§ 172. **Cost to town for maintenance of state and county highways.**— Each town shall pay for the maintenance and repair of

state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town. On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county, and to the county clerk thereof, a statement specifying the number of miles of state and county highways in each town in such county and the amount which each of such towns is required to pay into the county treasury on account of the maintenance of state and county highways. The board of supervisors shall cause the amount to be paid by each town of the county to be assessed, levied and collected therein in the same manner as other town charges, and such amount when collected shall be paid into the county treasury, to the credit of the fund for the maintenance of state and county highways in the several towns of the county.

§ 173. **Disbursement of maintenance funds.**— The amount apportioned by the commission for the maintenance and repair of state and county highways in each town together with the amount paid by each town therefor shall be expended for the repair and maintenance of such highways in such town. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the commission. Such order shall be issued upon vouchers duly presented to the commission in the form to be prescribed by them. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair.

§ 174. **Reports of county treasurer.**— The county treasurer shall report to the commission monthly or oftener, if required by the commission, the amount received by him on account of the maintenance and repair of state and county highways in the several towns in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission.

§ 175. **Compensation of town superintendents.**— If a town superintendent shall be directed by the commission to perform services in respect to the maintenance and repair of state and county highways within his town his compensation therefor shall be paid out of the moneys set apart as provided in this article for such maintenance and repair. Such compensation shall be fixed by the commission but shall in no case exceed the amount fixed by the town board as compensation for his services performed for the

town under this chapter, and in rendering his monthly bill to the supervisor, and his annual bill to the town board, no charge shall be made against the town for an expense or per diem charge upon any date for which an audit shall have been allowed by the state commission. And said state commission shall make proper rules and regulations to carry into effect this provision and to furnish to the town board prior to the annual audit due information as to the dates, compensation and expenses allowed by them to said town superintendent from the state repair fund.

§ 176. **Liability of state for damages.**— The state shall not be liable for damages suffered by any person from defects in state and county highways, but the liability for such damages shall remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter.

§ 177. **Maintenance of state and county highways in villages.**— Any portion of a state or county highway constructed or improved within the limits of an incorporated village, as provided in this chapter, shall be maintained and kept in repair by the board of trustees at the expense of the village in accordance with the rules and regulations of the commission under the supervision and direction of the district or county superintendent.

§ 178. **State to share expense of maintaining certain county roads.**— Whenever any county has heretofore constructed, under a general or special law, other than this chapter, a county road or roads, without expense to the state, the state shall be liable to annually contribute toward the expense of maintaining such road or roads fifty per centum of the amount appropriated by such county for the maintenance of such road or roads during the preceding year, unless provision be otherwise made for such maintenance as provided in this section. The clerk of the board of supervisors of a county entitled to a contribution from the state toward the maintenance of its roads under this section shall annually, on or before the first day of January, transmit to the state comptroller a statement certified by him and signed and verified by the chairman of such board, stating the amount appropriated by the board of supervisors of such county for the maintenance of such county road or roads during the preceding year. The comptroller shall draw his warrant upon the state treasury in favor of the treasurer of such county, for an amount equal to

fty per centum of the amount so appropriated. Such money shall be applicable to the repair and permanent improvement of each county road or roads, and shall be expended in the same manner as money appropriated by the county for such purpose. The sum paid by the state to any county by virtue of this section shall not exceed, in any one year, one-tenth of one per centum of the taxable property of such county. The commission may at any time inspect such county roads and if they determine that they are of sufficient importance and are properly constructed, they shall make an order directing that such county roads become a part of the system of county highways in such county, and thereafter such roads shall be maintained as county highways in the manner provided in this article, and the state shall cease to contribute for the maintenance thereof as provided in this section. Each order shall be served upon the chairman of the board of supervisors and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller.

§ 179. **Sprinkling; removal of filth and refuse.**— Upon petition signed by a majority of the taxpayers owning property abutting upon an improved state or county highway and filed with the town clerk, the town board may set aside any section of such highway outside of a village and contract for the sprinkling of the roadbed with water and also contract for the removal of filth and refuse therefrom. No such contract shall be entered into unless previously approved by the county superintendent. The amount of any such contract so entered into shall be assessed upon the property abutting upon such section in the proportion which the frontage of each parcel thereof bears to the length of the section exclusive of intersecting highways. Such assessment shall be made, levied and collected in the same general manner, and at the same time and by the same officers as the town taxes said town are assessed, levied and collected.

Laying Out, Altering and Discontinuing Highways; Private Roads.

- ction 190. Survey for the laying out of a highway.
- 191. Highways by dedication.
- 192. Application.
- 193. Application for condemnation commissioners.
- 194. Appointment of condemnation commissioners and their duties.
- 195. Notice of meeting.

- Section 196. Decision of condemnation commissioners in favor of application.
197. Damages in certain cases, how estimated.
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201. Laying out highways through burying-grounds.
202. Costs, by whom paid.
203. Damages assessed and costs to be audited.
204. When officers of different towns disagree about highway.
205. Difference about improvements.
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208. Final determination, how carried out.
209. Highways by use.
210. Fences to be removed.
211. Private road.
212. Jury to determine necessity and assess damages.
213. Copy application and notice delivered to applicant.
214. Copy and notice to be served.
215. List of jurors.
216. Names struck off.
217. Place of meeting.
218. Jury to determine and assess damages.
219. Their verdict.
220. Value of highway discontinued.
221. Papers to be recorded in town clerk's office.
222. Damages to be paid before opening the road.
223. Fees of officers.
224. Motion to confirm, vacate or modify.
225. Costs of new hearing.
226. For what purpose private road to be used.
227. Highways or roads along division lines.
228. Adjournments.
229. Widening roads, petition.
230. Powers and duties of commissioners.
231. Notice of decision to supervisors.
232. Widening, how constructed.
233. Actions to compel widening, how affected by petition.
234. Highways abandoned.
235. Highways in lands acquired by the United States, for fortification purposes, deemed abandoned.
236. Discontinuance of highway.
237. Description to be recorded.
238. Damages caused by discontinuance.
239. Papers, where filed.
240. Costs of motion.

§ 190. **Survey for the laying out of a highway.**—Whenever the town superintendent shall lay out any highway, either upon ap-

plication to him or otherwise, he shall notify the district or county superintendent, whose duty it shall be to either make a survey, or cause the same to be made, and the town superintendent shall incorporate the survey in an order to be signed by him, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.

§ 191. **Highways by dedication.**—Whenever land is dedicated to a town for highway purposes therein, the town superintendent may with the consent of the town board, either with or without a written application therefor, and without expense to the town, make an order laying out such highway, upon filing and recording in the town clerk's office with such order a release of the land from the owner thereof. A highway so laid out must not be less than two rods in width. Section two hundred does not apply to a highway by dedication. Such town superintendent may also, upon written application and with the written consent of the town board, make an order laying out or altering a highway, or discontinuing a highway, which has become useless since it was laid out, upon filing and recording in the town clerk's office, with such application, consent and order, a release from all damages from the owners of lands taken or affected thereby, when the consideration for such release, as agreed upon between such town superintendent, and owner or owners, shall not in any one case, from any one claimant, exceed one hundred dollars, and from all claimants five hundred dollars. An order of the town superintendent, as herein provided, shall be final.

§ 192. **Application.**—Any person or corporation assessable for highway taxes may make written application to the town superintendent of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway.

§ 193. **Application for condemnation commissioners.**—Whenever the land is not dedicated to the town for highway purposes, and not released as herein provided, the applicant shall, within thirty days after presenting the application to the town superintendent, and after at least five days' notice to said town superintendent of the time and place of the application to the county court, in this section provided for, by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, and if the county judge require on such notice to such parties interested as he shall direct, apply to the county court of the county where such highway shall be,

for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered, or to the uselessness of the highway proposed to be discontinued and to assess the damages by reason of laying out, opening, altering or discontinuing such highway. Such application shall be accompanied by the written undertaking of the applicant executed by one or more sureties, approved by the county judge, to the effect that if the commissioners appointed determine that the proposed highway or alteration is not necessary or that the highway proposed to be discontinued is not useless, the sureties will pay to the commissioners their compensation at the rate of four dollars for each day necessarily spent and all costs and expenses necessarily incurred in the performance of their duties, which amount shall not exceed the sum of one hundred dollars.

§ 194. **Appointment of condemnation commissioners, and their duties.**— Upon the presentation of such petition, the county court must appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, and who shall not be related by consanguinity or affinity within the sixth degree to the applicant or to any person interested in the proceeding or to the owner of any lands to be taken or affected by the laying out, alteration or discontinuance of a highway, as commissioners to determine the questions mentioned in the last section. They shall take the constitutional oath of office, and appoint a time and place at which they shall all meet to hear the town superintendent and supervisor of the town where such highway is situated, and others interested therein. They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof. They may adjourn the proceedings before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages. They shall make duplicate certificates of their decision, and shall file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

§ 195. **Notice of meeting.**— The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service cannot be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry.

§ 196. **Decision of condemnation commissioners in favor of application.**— If a majority of the commissioners appointed by the county court shall determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect. If the petition is for the laying out of a highway, the commissioners shall also include in their certificates what the probable cost would be of laying out and completing the proposed highway, in their opinion, based upon the evidence given before them on the hearings.

§ 197. **Damages in certain cases; how estimated.**— The owner of lands within the bounds of a highway discontinued may enclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damages caused by the laying out of a highway through his other lands in place of the discontinued highway.

§ 198. **Decision of condemnation commissioners denying application.**— If a majority of the commissioners appointed by the county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect. The costs and expenses necessarily incurred by such commissioners in the proceedings shall be indorsed upon such duplicate certificates, and upon a confirmation of such decision and of the amount of such costs and expenses by the county court, such costs and expenses not exceeding one hundred dollars shall be payable by the applicants.

§ 199. **Motion to confirm, vacate or modify.**—Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office, any person interested in the proceeding may apply to the court appointing the commissioners for an order confirming, vacating or modifying their decision, and such court may confirm, vacate or modify such decision. If the decision be vacated, the court may order another hearing of the matter before the same or other commissioners. If no such motion is made, the decision of the commissioners shall be deemed final. Such motion shall be brought on upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings, pending therein; and the decision of the county court shall be final, excepting that a new hearing may be ordered as herein provided, and excepting that any such decision may be reviewed on appeal upon questions affecting jurisdiction, and rulings and exceptions made and taken upon the hearing before the commissioners. If the final decision be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.

§ 200. **Limitations upon laying out highways.**—No highways shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyards of one or more years' growth, and used in good faith for vineyard purposes, or buildings or any fixtures or erections for the purposes of trade or manufactures, or any yard or enclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall be made on the certificate of the town superintendent of the town or towns in which the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate with eight days' notice of the time and place of the hearing before the county court shall be served on the owners of the land, or if they are not residents of the county upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper. The town superintendent shall then present the order of the county court, with the certificate and

upon which it was granted, certified by such court, to the appellate division of the supreme court in the judicial department in which the land is situated upon the usual notice of motion, upon the owner or occupant, or the attorney who appeared for him in the county court. If such appellate division of the supreme court shall confirm the order of the county court, the town superintendent shall then lay out and open such highway in other cases. The provisions of this section shall not apply to encroachments on or to buildings, fixtures, erections, yards or structures made or placed on such land after an application for laying out and opening the highway shall have been made. In laying out the highway to be laid out shall constitute an extension or continuation of a public highway already in use, and shall not, as a new portion, exceed half a mile in length, the town superintendent may lay out such extension or continuation of a width less than three rods, provided, however, that it be not less than the widest part of the highway of which it is an extension or continuation. In such case the town superintendent shall specify in his certificate the precise width of the new portion of such highway, and shall certify that such width is as great as the widest part of the highway of which it is a continuation or extension. No highway shall be laid out which shall be identical substantially so with a highway previously discontinued or abandoned for public purposes within seven years of such discontinuance or abandonment, in counties adjoining cities with populations of one million inhabitants.

01. Laying out highways through burying-grounds.— No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained be first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the town in which the same is situated, obtained upon notice to such persons as the court may direct.

02. Costs; by whom paid.— In all cases of assessments of taxes by commissioners appointed by the county court, the costs thereof shall be paid by the town thereof, except that when reassessment of damages shall be had on the application of the party from whom the damages were assessed, and such damages shall not be reassessed on such reassessment, the costs shall be paid by the party applying for the reassessment; and when application shall

be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to the first assessment, and may be recovered by action in favor of any person entitled to the same. Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to four dollars and his necessary expenses.

§ 203. **Damages assessed, and costs to be audited.**—All damages to be agreed upon, or which may be finally assessed, and costs against the town, as herein provided, shall be laid before the board of town auditors, or in towns not having a board of town auditors, before the town board, to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be placed upon the town abstract and levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the supervisor of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid.

§ 204. **When officers of different towns disagree about highway.**—When the town superintendent of any town or officers of any village or city having the powers of town superintendents shall differ with the town superintendent or superintendents of any other town or with the officers of such a village or city having the powers of town superintendents in the same county, relating to the laying out of a new highway or altering an old highway, extending into both towns, or a town and a village or city, or upon the boundary line between such towns or such town and a village or city, or when the town superintendent of a town in one county shall differ with the town superintendent of a town or the officers of a village or city having the powers of town superintendents in another county, relating to the laying out of a new highway, or the altering of the old highway, which shall extend into both counties, or be upon the boundary line between such counties, the town superintendents of both towns or the officers of the village or city having such powers shall meet on a five days' written notice, specifying the time and place, within some one of such towns, villages or cities, given by either of such town superintendents, or officers having powers of town superintendents, to make their determination in writing, upon the subject of their differences. If

they cannot agree, they or either of them may certify the fact of their disagreement to the county court of that county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village or city, where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they deem proper, and shall decide all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of roadbed, or any point that may arise relating thereto; and if they decide to open or alter any highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed. On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part and may order a new appraisal by the same or by other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. This section shall not be so construed as to compel any town or towns to construct, repair or maintain a bridge upon a boundary between towns, where previous to May seventh, nineteen hundred and three, an application had been made to any court, to compel the construction, repair and maintenance of a bridge upon such a boundary line, and such application had been denied.

§ 205. Difference about improvements.—When the town superintendent or the officers of a village or city having the powers of town superintendents therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or roadbed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereon beyond such bounds, but cannot agree in regard to the same, upon

written application of either of the superintendents or officers and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and roadbed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the town superintendents of the towns, or the officers of such villages or cities having the powers of such superintendents. Every commissioner appointed as herein provided shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

§ 206. **Highway in two or more towns.**—When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the town superintendents shall be served upon the town superintendent of each town; and the commissioners appointed by the court shall determine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.

§ 207. **Laying out, dividing and maintaining highway upon town line.**—An application to lay out a highway upon the line between two or more towns shall be made to the town superintendents of each town, who shall act together in the matter; and, upon laying out any such highway, the expense of opening, working

and keeping the same in repair shall be borne equally by such towns. The town superintendents shall cause a map and survey of the highway to be recorded in the office of the town clerk in each of the respective towns. If such highway be upon a line between one or more towns and a city or incorporated village, such application shall also be made to the officers of such city or village having the powers of the town superintendents and such officers may agree with the town superintendents of such towns as to division of such expense. Whenever such officers shall disagree, the question shall be submitted to the district or county superintendent or superintendents representing the county or counties, district or districts in which such highway is located and their decision shall be final when approved by the state commission. All highways heretofore laid out upon the line between any two towns or between a town and a city or an incorporated village shall be divided and allotted or redivided and reallotted, recorded and kept in repair in the manner above directed; and all bridges upon such highways shall be built and maintained jointly by the towns whether wholly located within one of them or otherwise.

§ 208. **Final determination, how carried out.**—The final determination of commissioners, appointed by any court, relating to laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the town superintendent of the town, the same as if they had made an order to that effect.

§ 209. **Highways by use.**—All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least two rods.

§ 210. **Fences to be removed.**—Whenever a highway shall have been laid out through any inclosed, cultivated or improved lands, in conformity to the provisions of this chapter, the town superintendent shall give to the owner or occupant of the land through which such highway shall have been laid, sixty days' notice in

writing to remove his fences; and if such owner shall not remove his fences within sixty days, the town superintendent shall cause them to be removed, and shall direct the highway to be opened and worked.

§ 211. **Private road.**—An application for a private road shall be made in writing to the town superintendent of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out.

§ 212. **Jury to determine necessity and assess damages.**—The town superintendent to whom the application shall be made shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.

§ 213. **Copy application and notice delivered to applicant.**—Such town superintendent shall deliver to the applicant a copy of the application, to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land.

§ 214. **Copy and notice to be served.**—The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and notice to be served upon the persons to whom it is addressed, by delivering to each of them who reside in the same town a copy thereof, or in case of his absence, by leaving the same at his residence and upon such as reside elsewhere, by depositing in the postoffice a copy thereof to each, properly enclosed in an envelope, addressed to them respectively at their postoffice address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian.

§ 215. **List of jurors.**—At such time and place, on due proof of the service of the notice, the town superintendent shall present a list of the names of thirty-six resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of them, and not interested in such lands.

§ 216. **Names struck off.**—The owners or occupants of the land may strike from the list not more than twelve names, and the applicant a like number; and of the number which remains, the twelve names standing first on the list shall be the jury.

§ 217. **Place of meeting.**— The town superintendent shall then appoint some convenient time and place for the jury to meet, and shall summon them accordingly.

§ 218. **Jury to determine and assess damages.**— The town superintendent and all the persons named and summoned on such jury, shall meet at the time and place appointed; but if one or more of the twelve jurors shall not appear, the town superintendent shall summon so many qualified to serve as such jurors as will be sufficient to make the number present twelve to forthwith appear and act as such; and when twelve shall have so appeared, they shall constitute the jury and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof.

§ 219. **Their verdict.**— The jury shall view the premises, hear the allegations of the parties, and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the town superintendent.

§ 220. **Value of highway discontinued.**— If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

§ 221. **Papers to be recorded in the town clerk's office.**— The town superintendent shall annex to such verdict the application, and their certificate that the road is laid out, and the same shall be filed and recorded in the town clerk's office.

§ 222. **Damages to be paid before opening the road.**— The damages assessed by the jury shall be paid by the party for whose benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the alteration or discontinuance of a public highway, such damages shall be paid by the town and refunded to the applicant.

§ 223. **Fees of officers.**— Every juror, in proceedings for a private road, shall be entitled to receive for his service one dollar

and fifty cents; and town superintendents their per diem compensation to be paid by the applicant.

§ 224. **Motion to confirm, vacate or modify.**—Within thirty days after the decision of the jury shall have been filed in the town clerk's office, the owner or occupant may apply to the county court of the county wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate or modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceedings to the town superintendent of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within two years.

§ 225. **Costs of new hearing.**—If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

§ 226. **For what purpose private road may be used.**—Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed.

§ 227. **Highways or roads along division lines.**—Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads.

§ 228. **Adjournments.**— If any accident shall prevent any of the proceedings required by this chapter relating to the laying out, altering or discontinuing of a highway, or the laying out of a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the town superintendent shall publicly announce such adjournment.

§ 229. **Widening roads; petition.**— When any part of a highway in any town of this state, not in an incorporated village or city, running between two or more villages or cities, has, because of the wearing away by a river or stream or any other natural cause, become narrower than the width required by statute, and is dangerous to the users of such highway, twelve or more resident taxpayers of such town may present a petition to the county court of the county within which such town is situated. The petition shall describe the part of the highway proposed to be widened and state that such highway has become lessened in width by the action of a river or stream or other cause, that it is dangerous to the traveling public, that the widening and improvement of such highway is necessary for the public convenience and welfare, that the highway is an important leading road between two or more cities or villages, that the cost of such widening and improvement would exceed the sum of two thousand five hundred dollars and would be too burdensome on the town or towns otherwise liable therefor. Such petition shall be verified by at least three of the petitioners. On receipt of the petition the county court shall forthwith appoint three commissioners who shall not be named by any person interested in the proceedings and who shall be taxpayers of such county, but who shall not reside in the town or towns in which the highway, proposed to be widened and improved, is situated.

§ 230. **Powers and duties of commissioners.**— The commissioners shall take the constitutional oath of office and appoint a time and place for a meeting to hear all persons interested in the proposed widening of the highway. They shall personally examine the part of the highway proposed to be widened, hear any reasons for or against such widening and ascertain the probable cost of the work. They shall have power to issue subpoenas, administer oaths and examine witnesses; they shall keep the minutes of their proceedings and reduce to writing all oral evidence given before them. They shall make duplicate certificates of their decision, filing one in the town clerk's office of the town in which the said

highway is located, and the other, with such minutes and evidence, in the county clerk's office of the county where the highway is located. Such commissioners shall have the same power as to the assessment of damages caused by the widening of such highway as commissioners appointed under this article for the discontinuance, alteration or laying out of a highway, and as to such assessment the same proceeding may be had for the confirmation, vacating or modifying of such decision, as provided in and by this article. The commissioners shall receive a compensation of five dollars for each day necessarily spent in the performance of their duties under this section, and the amount so paid to the said commissioners shall be a charge upon the town or towns in which the highway, proposed to be widened as aforesaid, is located.

§ 231. **Notice of decision to supervisors.**— If a majority of the commissioners shall determine that the proposed widening of the highway is necessary and that the cost thereof would be too burdensome for the town, exceeding in probable cost two thousand five hundred dollars, they shall notify the board of supervisors of the county of such decision. The board of supervisors shall thereupon cause one-half of the amount of the estimated cost to be raised by the county and paid to the supervisor of the town or towns in which that part of the highway proposed to be widened as aforesaid is located, and said supervisor shall apply the sum so received by him towards the payment of the cost of such widening. The balance of the expense shall be raised in the manner provided by law, by the town or towns in which that part of the highway proposed to be widened as aforesaid is located.

§ 232. **Widening, how constructed.**— The town superintendent shall construct such widening of the highway according to plans and specifications adopted by the district or county superintendent and approved by the town board of his town. The bills and expenses incurred in such work shall be audited by the town board and paid by the supervisor upon written order of the town superintendent, after the same shall have been approved by the town board, out of moneys raised for such purpose as provided in the preceding section.

§ 233. **Actions to compel widening; how affected by petition.**— In case an action might lie in any court of this state against the town superintendent of any town or towns to compel such superintendent to widen a part of a highway, the width of which has become less than that required by statute, or in case an action

has been brought against such superintendent to compel him to widen a part of a highway, the width of which has become less than that required by statute, the presentation of a verified petition to the county court as provided for in section two hundred and twenty-nine shall prevent the commencing of any such action as aforesaid and cause such an action already commenced, to cease, and shall be a bar to a recovery on the part of the plaintiff of a judgment against such superintendent in any such action instituted or prosecuted to judgment after the passage of this chapter.

§ 234. **Highways abandoned.**— Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said periods shall be deemed abandoned as a right of way. The town superintendents shall file, and cause to be recorded in the town clerk's office of the town, a written description, signed by them, of each highway and public right of way so abandoned, and the same shall thereupon be discontinued. There may also be a qualified abandonment of a highway under the following conditions and for the following purposes, to wit: Where it appears to the town superintendents, at any time, that a highway has not become wholly disused as aforesaid, but that it has not for two years next previous thereto, been usually traveled along the greater part thereof, by more than two vehicles daily, in addition to pedestrians and persons on horseback, they shall file and cause to be recorded in the town clerk's office a certificate containing a description of that portion of the highway partly disused as aforesaid and declaring a qualified abandonment thereof. The effect of such qualified abandonment, with respect to the portion of said highway described in the certificate, shall be as follows: It shall no longer be worked at public expense; it shall not cease to be a highway for purposes of the public easement, by reason of such suspension of work thereon; no person shall impair its use as a highway nor obstruct it, except as hereinafter provided, but no person shall be required to keep any part of it in repair; wherever an owner or lessee of adjoining lands has the right to possession of

other lands wholly or partly on the directly opposite side of the highway therefrom, he may construct and maintain across said highway a fence at each end of the area of highway which adjoins both of said opposite pieces of land, provided that each said cross-fence must have a gate in the middle thereof at least ten feet in length, which gate must at all times be kept unlocked and supplied with a sufficient hasp or latch for keeping the same closed; all persons owning or using opposite lands, connected by such gates and fences, may use the portion of highway thus inclosed for pasturage; any traveler or other person who intentionally, or by wilful neglect, leaves such gate unlatched, shall be guilty of a misdemeanor, and the fact of leaving it unlatched shall be prima facie evidence of such intent or wilful neglect. Excepting as herein abrogated, all other general laws relating to highways shall apply to such partially abandoned highway.

Modes of abandonment. This section provides for abandonment of a highway, (1) where a highway has not been opened and worked within six years from the time it was dedicated to the public, or laid out by the town superintendent either with or without the proceedings provided for by this article; (2) where a highway has not been traveled or used as a highway for six years. Besides these two methods a highway may be discontinued and closed after proceedings had for such purpose as provided in this article.

§ 235. **Highways in lands acquired by the United States for fortification purposes deemed abandoned.**—When land sought to be acquired by the United States of America for the purpose of fortifications includes a highway or portion thereof, the condemnation proceedings may include such highways or portion thereof, and the people of the state of New York, any municipality, county or other party claiming an interest therein may be made a party defendant in such proceeding, and the interest of the state, county, municipality or other claimant be determined, and the award made therefor. Forthwith upon the acquisition by the United States of America of land which includes a highway or portion thereof, there shall be filed in the office of the town clerk of the town, and also in the office of the county clerk of the county, in which such land is located, certified copies of the record or transfer to the United States of such land, together with a map of such land, on which map such highway or portion thereof shall be indicated by metes and bounds, and thereupon such highway or portion thereof shall be deemed discontinued and abandoned for highway purposes, and if proceedings have been taken, pur-

suant to article six of this chapter for the improvement of such highway by state aid, all such proceedings, together with any appropriation mde for the improvement of such highway or portion thereof, as indicated on such map, shall be deemed revoked, vacated and set aside.

§ 236. **Discontinuance of highway.**—Whenever the town superintendent of any town, in which during the past ten years there has been expended the sum of three hundred thousand dollars, or more, for the purpose of macadamizing the highways of such town, shall determine that any portion of any highway or street, not within the limits of an incorporated village, which is the terminus of such street or highway, is unnecessary for highway purposes, and said town superintendent may, by an order to be duly entered in the town clerk's office, direct such highway to be discontinued and abandoned for public purposes. Provided, however, that no portion of such highway to be discontinued shall be greater than one thousand feet of the terminus thereof and that the owners of the land on both sides of such highway or street, for the distance it is proposed to discontinue the same, shall, by written petition to such town superintendent have requested the discontinuance thereof.

§ 237. **Description to be recorded.**—Immediately upon making and entering the order mentioned in section two hundred and thirty-six of this chapter, the said town superintendent shall cause a written description of that portion of the street or highway ordered to be discontinued to be filed and recorded in the office of the town clerk of the town in which the said street or highway is located, and when the same is duly recorded the said portion of the said street or highway shall thereupon be and become duly abandoned and discontinued for highway purposes.

§ 238. **Damages caused by discontinuance.**—Any person or corporation interested as owner or otherwise, in any lands and claiming any loss or damage, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of the last two sections, may, upon ten days' written notice to the town superintendent of the town in which such lands are situated apply to the supreme court or to the county court of the county within which such lands are situated for the appointment of commissioners to estimate and determine such loss and damage, whereupon the court shall appoint

three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor, who shall make their report thereupon to such court, and which report when finally confirmed shall be final and conclusive in respect thereto, and the legality and equity of any and all such claims shall be determined by such commissioners and by the court upon the hearing of their report. Any loss or damage so estimated and determined shall be paid by said town as in case of judgment.

§ 239. **Papers, where filed.**—All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the town superintendent as soon as a decision shall have been made thereon in the town clerk's office of the town.

§ 240. **Costs of motion.**—Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. On an uncontested motion to confirm the report of the commissioners so appointed, if said report is favorable to the applicant and confirmed by the court, costs may be allowed not exceeding fifty dollars sufficient to compensate the applicant's attorney for his services in the proceedings. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.

Bridges.

Section 250. When town or county expense.

- 251. Levy of tax upon county.
- 252. Penalty, and notice on bridge.
- 253. Offense.
- 254. Joint liabilities of towns and their joint contracts.
- 255. Refusal to repair.
- 256. Proceedings in court.
- 257. Supervisor to institute proceedings.
- 258. Duty of superintendents.
- 259. Report of town superintendents, and levy of tax.
- 260. Appeals.
- 261. Power of court on appeal.
- 262. Refusal to repair bridges.

§ 250. **When town or county expense.**—The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public free bridges

constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so constructed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses. When such bridges are constructed over streams or other waters forming the boundary line between a city of the third class and a town, such city and town shall be liable each to pay its just and equitable share of the expenses for the construction, maintenance and repair of such bridges. Except as otherwise provided by law, a city of the third class shall be deemed a town for the purposes of this article. Each of the counties of this state shall also be liable to pay for the construction, care, maintenance, preservation and repair of public bridges, lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expenses of such construction, care, maintenance, preservation and repair.

§ 251. **Levy of tax upon county.**— Each supervisor shall present to the board of supervisors of his county at its annual session a statement specifying the amount paid during the preceding year ending on the thirty-first of October for the construction, care, maintenance, preservation and repair of public bridges over streams or other waters forming the boundary of such county. The board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense, and the same when collected shall be paid to the supervisor of such town to be applied by him on the order of the town superintendent after audit as provided in this chapter, toward the payment of such expense.

§ 252. **Penalty, and notice on bridge.**— The town superintendent may fix and prescribe a penalty, not less than one or more than five dollars, for riding or driving faster than a walk on any bridge in his town whose chord is not less than twenty-five feet in length, and put up and maintain in a conspicuous place, at each end of the bridge, a notice in large characters, stating each penalty incurred.

§ 253. **Offense.**—Whoever shall ride or drive faster than a walk over any bridge, upon which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such town superintendent, and specified in the notice.

§ 254. **Joint liabilities of towns and their joint contracts.**—Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines, except where the board of supervisors has otherwise apportioned such expense as provided in section ninety-seven. The town superintendents of all the towns, or of one or more of such towns, the others refusing to act, may, when directed by their respective town boards, enter into a joint contract for making and repairing such bridges.

§ 255. **Refusal to repair.**—If the town board of either of such towns, after notice in writing from the town board of any other of such towns, given by the town clerk thereof, shall not within twenty days give their consent in writing to build or repair any such bridge, and shall not within a reasonable time thereafter direct, by resolution, the same to be done, the town board giving such notice may direct the town superintendent to make or repair such bridge, and then maintain an action in the name of the town, against the town which neglects or refuses to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.

§ 256. **Proceedings in court.**—Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the town board in each of such towns, to build, rebuild or repair such bridges, and if such town boards refuse to build, rebuild or repair such bridge within a reasonable time, either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each supervisor at least eight days before the hearing, may apply to the supreme court at a special term thereof, to be held in the judicial district in which such bridge or any part thereof shall be located, for an order requiring such town boards to direct the town superintendents to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof to the court. Upon the coming in of the report, in case of such reference, or upon or after the hearing of the motion,

in case no reference shall be ordered, the court shall make an order thereon as the justice of the case shall require. If the motion be granted in whole or in part, whereby funds shall be needed to carry the order into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town.

§ 257. **Supervisor to institute proceedings.**— The supervisor of any such town shall, when directed by the town board, institute and prosecute proceedings under this chapter, in the name of the town, to compel the town board of such adjoining town or towns to cause the town superintendents thereof to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are thereby authorized.

§ 258. **Duty of superintendents.**— The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the town superintendent of such adjoining towns respectively the town superintendent of such towns shall forthwith meet and cause such bridge to be built, rebuilt or repaired in accordance with plans and specifications prepared or approved by the district or county superintendent, out of any funds in the hands of the supervisors of such towns applicable thereto; if an inadequate amount of such funds are on hand, the town boards of such towns shall direct the town superintendents thereof to build, rebuild or repair such bridge, and the same shall be done upon credit, or in part for cash or in part upon credit according to the exigency of the case; and such town boards shall direct the superintendents to enter into a contract, to be approved by such town boards, for building, rebuilding or repairing such bridge pledging the credit of each town for the payment of its appropriate share so far as the same shall be upon credit.

§ 259. **Report of town superintendents, and levy of tax.**— The town superintendent of each town shall make a full and verified report of their proceedings in the premises including an accurate account of what has been done in respect to such bridge, and shall attach thereto a copy of the order granted by the supreme court. Such report, account and order shall be certified by the town board and delivered to the supervisor and be presented by him to the board of supervisors of his county. The board of supervisors at their annual meeting shall levy a tax upon each of such towns, when in the same county, and upon the appropriate towns when in different counties, for its share of the costs of

building, rebuilding and repairing such bridge, after deducting all payments actually made by the supervisor upon the written order of the town superintendent. Such tax, including all payments, shall in no case exceed the amount specified in the order of the supreme court.

§ 260. **Appeals.**— Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the appellate division of the supreme court for the review of the decision. The appellate division may alter, modify or reverse the order, with or without costs.

§ 261. **Power of court on appeal.**— The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section shall conform to the practice of the supreme court, in case of appeal from an order of a special term to the appellate division.

§ 262. **Refusal to repair bridges.**—Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge shall have fallen down, or been swept away by a freshet or otherwise, if the town superintendent of the adjoining town or towns, after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining town or towns, each being liable for its just proportion; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for an order requiring such towns severally to reimburse such expenditures, which application shall be made upon papers to be served upon the town superintendents of such towns at least eight days prior thereto; and the court may grant an order requiring each adjoining town or towns to pay its just proportion of the expenditure, specifying the same; and the town superintendent of each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such per-

sons or corporation as incurred the expenditure. The order shall be appealable.

Ferries.

Section 270. Licenses.

271. Undertaking.

272. Appendages for rope ferries.

273. Superintendent of public works may lease right of passage.

274. When schedules to be posted.

§ 270. **Licenses.**—The county court in each of the counties of this state or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years. No license shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days' written notice from such person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters.

§ 271. **Undertaking.**—Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct.

§ 272. **Appendages for rope ferries.**—Any person licensed to keep a ferry may, with the written consent of the town superintendent of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages for a rope ferry.

§ 273. Superintendent of public works may lease right of passage.

— The superintendent of public works, may, where ferries are now maintained at tide-water, lease the right of passage for foot passengers across state lands adjoining tide-water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state.

§ 274. When schedules to be posted.— Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly printed in the English language of the rates of ferriage charges thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each day's neglect or refusal to post such schedule or any of them, to be recovered by any person who shall sue therefor in any court of competent jurisdiction.

Miscellaneous Provisions.

Section 280. Construction or improvement of highways by county and town.

281. When commissioners do not act.

282. Intemperate drivers not to be engaged.

283. Drivers, when to be discharged.

284. Leaving horses without being tied.

285. Owners of certain carriages liable for acts of drivers.

286. Term "carriage" defined.

287. Entitled to free use of highways.

288. Depositing ashes, stones, sticks, etc., upon the highway.

289. Steam traction engines on highways.

290. Injuries to highways.

291. When town not liable for damages.

292. Law of the road.

293. Trees, to whom they belong.

294. Injuring fruit or shade trees.

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296. Fallen trees to be removed.

297. Penalties, how recovered.

298. Acquisition of plank roads.

299. Borrowing money; bonds.

300. Raising money to pay bonds and interest.

301. Roads so acquired to be part of highway system.

302. When road is in two or more counties.

303. Albany post road; railroad tracks thereon.

§ 280. Construction or improvement of highways by county and town.—The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof in one or more towns of the county at the joint expense of the county and town, as provided in this section. The board may, by resolution, direct the district or county superintendent to examine such highway or section thereof, and if the board considers such highway or section thereof to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimates therefor. Upon the completion of such preliminary maps, plans, specifications and estimates they shall be submitted to the board of supervisors for approval, and such board may thereupon adopt a resolution providing for the construction or improvement of such highway in accordance with such plans, specifications and estimates. The board of supervisors shall award contracts for the construction or improvement of such highway and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts. Such contract may be awarded to the town board of any town in which such highway or section thereof is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto so far as may be. The board of supervisors shall determine the portion of the cost of the construction or improvement of such highway to be borne by the county and the portion to be borne by the town or towns in which such highway is located. The amount so determined to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by the town or towns in which the highway is located shall be levied and collected as a town charge and when collected shall be paid into the county treasury. The amount so paid by the town shall not be considered in determining the minimum amount to be levied and collected in each year for the repair and improvement of highways as provided in section ninety-four of this chapter nor shall such amount be considered in determining the amount to be paid by the state to the town for the repair and improvement of the highways therein. The resolution of the board of supervisors providing for the construction or improvement of such highway may authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of

such towns to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter relating to a resolution authorizing a town to borrow money for highway purposes.

The construction or improvement authorized by such resolutions shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained at the sole expense of the towns in which they are located, unless the board of supervisors shall apportion a share of the expense thereof upon the county.

§ 281. **When commissioners do not act.**—When a commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the courts which appointed him shall appoint another in his place.

§ 282. **Intemperate drivers not to be engaged.**—No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or to the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment.

§ 283. **Drivers, when to be discharged.**—If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice.

84. Leaving horses without being tied.— No driver of any vehicle used for the purpose of conveying passengers for hire shall leave the horse attached thereto, while passengers remain in the vehicle without first making such horses fast with a sufficient halter, collar or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall violate against the provisions of this section, he shall forfeit the sum of twenty dollars.

85. Owners of certain carriages liable for acts of drivers.— The owners of every carriage running or traveling upon any turnpike road or highway, for the conveyance of passengers, shall be jointly and severally, to the party injured, for all injuries and damages done by any person in the employment of such owner or driver, while driving such carriage, whether the act causing such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

86. Term "carriage" defined.— The term "carriage" as used in this article shall be construed to include stage coaches, hack carriages, cabs, carts, sleighs, sleds, automobiles or motor vehicles, and other carriage or vehicle used for the transportation of persons and goods, or either of them, and bicycles, tricycles and all vehicles propelled by manumotive or pedomotive power, or electricity, steam, gasoline or other source of energy.

87. Entitled to free use of highways.— The commissioners, boards or other authorities having charge or control of any high- or low-way, public street, park, parkway, driveway, or place, shall have no power or authority to pass, enforce or maintain any ordinance, law or regulation by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any highway, street, avenue, roadway, driveway, parkway, park, or place, at any time when the same is open to the free use of persons and using other pleasure carriages, except upon such highway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages. Nothing herein shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parkways, and places, or the regulation of the speed of motor vehicles, or the use of motor vehicles, in public parks and upon parkways and driveways in the city of New York, under the exclusive jurisdiction and control of the department of parks of said city, nor

prevent any such commissioners, trustees or other authorities in any other city from regulating the speed of any vehicles herein described in such manner as to limit and determine the proper rate of speed with which such vehicle may be propelled nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances nor to prohibit the use of any vehicle upon that part of the highway, street, park, or parkway, commonly known as the footpath or sidewalk.

§ 288. **Depositing ashes, stones, sticks, etc., upon the highway.**— Any person who shall deposit or throw loose stones in the gutter or grass adjoining a highway, or shall deposit or throw upon a highway, ashes, papers, stones, sticks, or other rubbish, shall be liable to a penalty of ten dollars to be sued for and recovered by the town superintendent. No stone or other rubbish shall be drawn to and deposited within the limits of any highway, except for the purpose of filling in a depression or otherwise improving the highway, without the consent and under the direction of the town superintendent.

§ 289. **Steam traction engines on highways.**— The owner of a steam roller, steam traction engine or any other machinery, either propelled or driven by steam, his servant or agent shall not allow, permit or use the same, pass over, through or upon any public highway or street except upon railroad tracks, unless such owner or his agents or servant shall send before the same a person of mature age, at least one-eighth of a mile in advance, who shall notify and warn persons traveling and using such highway or street with horses or other domestic animals, of the approach thereof, and at night such person shall carry a red light, except in incorporated villages and cities.

§ 290. **Injuries to highways.**— Whoever shall injure any highway or bridge maintained at the public expense, by obstructing or diverting any creek, water-course or sluice, or by dragging logs or timber on its surface, or by any other act, or shall injure, deface or destroy any mile-stone or guide-post erected on any highway, shall for every such offense forfeit treble damages.

§ 291. **When town not liable for damages.**— No town shall be liable for any damage resulting to person or property by the reason of the breaking of any bridge, sluice or culvert, by transportation on the same of any traction engine, portable piece of machinery, or of any vehicle or load, together weighing eight tons or over, but any owner thereof or other person engaged in

transporting or directing the same shall be liable for all damages resulting therefrom.

§ 292. **Law of the road.**—1. Whenever any persons traveling with any carriages, or riding horses or other animals, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages, horses, or other animals to the right of the center of the road, so as to permit such carriages, horses, or other animals to pass without interference or interruption.

2. Any carriage or the rider of a horse or other animal, overtaking another shall pass on the left side of the overtaken carriage, horse or other animal. When requested to do so, the driver or person having charge of any carriage, horse or other animal, traveling, shall, as soon as practicable, turn to the right, so as to allow any overtaking carriage, horse or other animal free passage on his left.

3. In turning corners to the right, carriages, horses or other animals shall keep to the right of the center of the road. In turning corners to the left, they shall pass to the right of the center of intersection of the two roads.

4. Any person neglecting to comply with, or violating any provision of this section shall be liable to a penalty of five dollars to be recovered by the party injured, in addition to all damages caused by such neglect or violation.

§ 293. **Trees; to whom they belong.**—All trees standing or lying on any land within the bounds of any highway, shall be for the proper use of the owner or occupant of such land, except that they may be required to repair the highway or bridges of the town.

§ 294. **Injuring fruit or shade trees.**—It shall be unlawful for any person or persons whatsoever in this state to hitch any horse or other animal to or leave the same standing near enough to injure any fruit or forest tree growing within the bounds of the public highway, or used as a shade or ornamental tree around any schoolhouse, church or public building, or to cut down or mutilate in any way any such ornamental or shade tree; but the right of property owners along the highway to cultivate, train and use such shade trees shall not be impaired or abridged hereby. Any person or persons guilty of violating the provisions of this section shall be deemed guilty of misdemeanor, and shall be punishable by a fine of not less than five dollars, nor more than

twenty-five dollars for each such offense, and in case of failure to pay any fine imposed, may be committed to jail, not exceeding one day for each dollar of such fine. Courts of special sessions having jurisdiction to try misdemeanors, as provided by section fifty-six of the code of criminal procedure, shall have exclusive jurisdiction to try offenders in all cases occurring in the same manner as in other cases, where they now have jurisdiction, and subject to the same power of removal, and to render and enforce judgments, to the extent herein provided. All fines collected under the provisions of this act shall be paid when the offense is committed in a town outside of incorporated villages, to the supervisor of the town, to be used as the town board and town superintendent may direct. When the offense is committed in any village of the county, which by law is constituted a separate road district, the fine shall be paid to the treasurer of said village, to be used as the board of trustees may direct.

§ 295. **Penalty for falling trees.**— If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream.

§ 296. **Fallen trees to be removed.**— If any tree shall fall, or be fallen by any person from any inclosed land into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two days; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed.

§ 297. **Penalties, how recovered.**— All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the town superintendent, in the name of the town in which the offense shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town.

§ 298. **Acquisition of plank roads.**— The board of supervisors of any county, except a county wholly within the city of New York, and except the counties of Erie and Essex, may by a vote of a majority of the members thereof, by resolution, determine to acquire the rights and franchises of any individual or corporation, lawfully entitled to exact toll or charge for walking, riding or driving over any plankroad or turnpike, or a bridge within such

county, erected over any unnavigable stream, or over the Hudson river above Waterford. Upon the adoption of such resolution, the board of supervisors shall acquire such rights, franchises and property by purchase, if able to agree with the owners thereof, and otherwise by condemnation in the name of the county.

§ 299. Borrowing money; bonds.— The board of supervisors of such county may borrow money for the acquisition of such rights, franchises, and property, and may issue the bonds or other evidences of indebtedness of the county therefor, but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum and shall not run for a longer period than twenty years and shall not be sold for less than par.

§ 300. Raising money to pay bonds and interest. -- Except in the counties of Rensselaer, Onondaga, Albany and Columbia, the amount of such bonds in whole or in part together with the interest thereon may be apportioned by the boards of supervisors upon the towns, cities and villages constituting separate highway districts, in which such plankroad, turnpike or bridge is located, in such proportions as the boards may deem just and the amount so apportioned to each municipality for the payment of the principal and interest of such bonds shall be annually levied and collected at the same time and in the same manner as money for other county charges. In the counties of Rensselaer and Columbia, the boards of supervisors, in making up the annual tax budget of the counties, shall each year levy and assess upon and against the taxable property in said counties in addition to the amounts levied and assessed for other county charges, an amount sufficient to pay the interest falling due and payable on the said bonds during such year, and also an amount sufficient to pay the proportion of the years fixed at the time during which said bonds shall run from their issue to maturity. The amount raised by tax in each year for the payment of the principal of said bonds shall be preserved intact by the county treasurers of said counties until said bonds mature and are payable, and upon the maturity of said bonds, said county treasurer shall pay the same in full out of the moneys so raised by annual tax therefor and shall thereupon take back said bonds with receipts for the payment thereof and deliver them to the boards of supervisors of said counties for cancellation. Said county treasurer shall deposit at interest the said moneys yearly raised by tax for payment of the principal of said bonds in such bank or depository as shall be designated by the boards of supervisors of said counties, and the amount realized from the interest

thereon shall be used for the purposes of the said counties under the direction of the said boards of supervisors.

§ 301. **Roads so acquired to be part of highway system.**—A plankroad, turnpike or bridge acquired pursuant to this article shall become a part of a highway system of such county and of the towns, cities and villages in which the same is located, and shall thereafter be repaired and maintained in the same manner as the other highways or bridges therein.

§ 302. **When road is in two or more counties.**—When a plankroad, turnpike, toll road or bridge is partly in one county and partly in another, the boards of supervisors of the said counties shall act together in the manner prescribed above, and determine the amount to be paid to said plankroad, turnpike, toll road or bridge company, by each county, and such amount against each county, after such determination, shall be paid by each county.

§ 303. **Albany post road; railroad tracks thereon.**—The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel. No trustees of any village or corporation of any city upon its route, or town superintendents of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect. This section shall not apply to any portion of said road within the city of New York, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike, nor to the town of Cortlandt or the village of Sing Sing, in Westchester county.

Saving Clause; Laws Repealed; When to Take Effect.

Section 310. Transfer of powers and duties of state engineer.

311. Transfer of records; eligibility of present employees.

312. County engineers and superintendents of highways to be continued in office.

313. Pending action or proceedings.

314. Saving clause.

315. County highway maps preserved.

316. Construction.

317. When to take effect.

318. Laws repealed.

§ 310. Transfer of powers and duties of state engineer.— On and after the taking effect of this chapter, and the appointment and qualification of the state commission as herein authorized, all the powers and duties of the state engineer in respect to highways and bridges, conferred and imposed by any statute of this state, shall be transferred to the department of highways to be exercised and performed by the state commission of highways as provided herein.

§ 311. Transfer of records; eligibility of present employees.— The state engineer shall transfer and deliver to the state commission of highways all contracts, books, maps, plans, papers and records of whatever description, in his possession when such commission is appointed and have qualified, pertaining to the construction, improvement, maintenance and supervision of highways and bridges and such commission is authorized at such time to take possession of all such contracts, books, maps, plans, papers and records. The commission may also retain in its employment resident and other engineers, levelers, rodmen, clerks and employees engaged or connected with the department of highways in the office of the state engineer, or employed by him in connection with the powers and duties exercised and performed by him in respect to highways and bridges, and all such engineers, clerks and employees shall be eligible to transfer and appointment to positions under the commission.

§ 312. County engineers and superintendents of highways to be continued in office.— County engineers and superintendents of highways in office when this chapter takes effect shall be continued in office during their present term of office and until the district or county superintendents shall have been appointed and have qualified as provided in this chapter. Such county engineers and superintendents of highways shall exercise the powers and perform the duties hereby conferred and imposed upon district or county superintendents until the appointment and qualification of a district or county superintendent as above provided. Upon the appointment and qualification of a district or county superintendent for the county for which such county engineer or superintendent of highways is appointed all contracts, books, maps, plans, papers, and records pertaining to the construction, improvement, maintenance and supervision of highways in such county shall be transferred to such district or county superintendent.

§ 313. **Pending actions or proceedings.**— This chapter shall not affect pending actions or proceedings, civil or criminal, pertaining to the construction, improvement, maintenance, supervision or control of highways and bridges, brought by or against the state engineer, or county engineer or a county superintendent of highways, or a commissioner of highways, under the provisions of any statute hereby repealed, but the same may be prosecuted or defended in the same manner by the commission or by the officer having jurisdiction in respect thereto. Any investigation, examination or proceeding undertaken, commenced or instituted by the state engineer, county engineer or highway commissioner or either of them relating to highways or bridges may be conducted or continued to a final determination by the proper officer hereunder, in the same manner, and under the same terms and conditions, and with the same effect as though this chapter had not been passed.

§ 314. **Saving clause.**— The repeal of a law, or any part of it specified in the annexed schedule shall not affect or impair any contract, or any act done, or right accruing, accrued or acquired or any penalty, forfeiture, or punishment incurred prior to the time when this chapter or any section thereof takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent as if such laws had not been repealed. The provisions of this chapter shall not affect or impair any act done or right accruing, accrued or acquired under or in pursuance of any resolution adopted by the board of supervisors of a county, on or before the thirty-first day of December, nineteen hundred and eight, requesting the construction or improvement of a highway therein, as provided in chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, or under or in pursuance of any resolution adopted on or before such date by a board of supervisors, under such act and the acts amendatory thereof, providing for the construction or improvement of a highway in a county in accordance with maps, plans and specifications submitted to such board by the state engineer, or under or in pursuance of any contract for the construction or improvement of a highway, awarded as provided in such chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. All further proceedings in respect to such highway shall be taken in accordance with the provisions of this chapter.

§ 315. **County highway maps preserved.**— The county highways to be selected by the commission for construction or improvement, as provided in this chapter, shall be the highways in the respective counties designated upon the map of the highways of the state, prepared by the state engineer as provided by law, and approved by the legislature by chapter seven hundred and fifteen of the laws of nineteen hundred and seven; except the highways on such map which have been designated and described as state highways by section one hundred and twenty of this chapter. Such map shall remain in full force and effect notwithstanding the repeal of such chapter seven hundred and fifteen of the laws of nineteen hundred and seven by this chapter; except that the board of supervisors of any county is hereby authorized to modify the designation of county highways on such map by resolution duly adopted by a majority vote of the members of such board, provided the total mileage as originally designated upon the county map in such county is not thereby materially increased. A certified copy of such resolution shall be transmitted to the commission, or to the state engineer if the same be adopted prior to the appointment and qualifications of the commission.

§ 316. **Construction.**— Wherever the term state engineer shall occur in any law, contract or document such term shall be deemed to refer to the state commission of highways as established by this chapter so far as such law, contract or document pertains to matters which are within the jurisdiction of such commission of highways. Wherever the term county engineer or county superintendent of highways is used in any such law, contract or document such term shall be deemed to refer to and include the county or district superintendent having jurisdiction of the matter contained in such law, contract or document.

The provisions of this chapter so far as they are substantially the same as those existing at the time they shall take effect, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new elements. References in laws not repealed to provisions of law incorporated in this chapter and repealed, shall be construed as applying to the provisions so incorporated.

§ 317. **When to take effect.**— This chapter shall take effect the first day of January, nineteen hundred and nine, except as to the provisions specified as follows:

1. The provisions of sections forty-three, ninety, ninety-one, ninety-four, ninety-five, ninety-nine, and one hundred, relating to

highway commissioners, estimates of expenditures, duties of town board in respect thereto, levy of taxes, the limitation of amounts to be raised, submission of propositions at town meetings, assessments of village property and statements by the clerk of the board of supervisors to the comptroller, shall take effect immediately.

2. The provisions of sections one hundred and thirty and one hundred and thirty-one of this chapter, pertaining to the award of contracts for the construction of county highways shall take effect immediately and shall apply to contracts to be awarded under chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof, prior to January first, nineteen hundred and nine; and until the commission shall have been appointed and have duly qualified, the state engineer and surveyor shall exercise the powers and perform the duties conferred upon the said commission by the foregoing sections.

3. The provisions of section one hundred and seventy-nine, relating to the sprinkling of state and county highways and the removal of refuse therefrom; the provisions of section two hundred and eighty, relating to the construction or improvement of highways at the joint expense of a county and town, and the provisions of section three hundred and fifteen relating to the modification of maps by boards of supervisors and the provisions of this section shall take effect immediately.

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